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A
DIGEST
OF THE
LAWS
OF
MISSOURI TERRITORY.

COMPRISING:

AN ELUCIDATION OF THE TITLE OF THE UNITED STATES TO LOUISIANA:—
CONSTITUTION OF THE UNITED STATES:—TREATY OF SESSION:—
ORGANIC LAWS:—LAWS OF MISSOURI TERRITORY,
(alphabetically arranged):—SPANISH REGULATIONS FOR THE ALLOTMENT OF LANDS:—
LAWS OF THE UNITED STATES,
FOR ADJUSTING TITLES
TO LANDS, &c.

TO WHICH ARE ADDED,

A variety of Forms, useful to Magistrates.

By HENRY S. GEYER.

ST. LOUIS:
PRINTED FOR THE PUBLISHER, BY JOSEPH CHARLESS,
AT THE MISSOURI GAZETTE OFFICE.

1818.

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Law
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Mo.
La
Geyer

TERRITORY OF MISSOURI:—NORTHERN CIRCUIT: ss.

L. S.

BE IT REMEMBERED, that on the twenty-ninth day of December, in the forty-second year of the Independence of the United States of America, A. D. 1817, HENRY S. GEYER, of the territory aforesaid, hath deposited in the office of the Superior Court, of the territory of Missouri, for the Northern Circuit, the title of a Book, the right whereof he claims as proprietor in the words following, to wit:—

"A DIGEST OF THE LAWS OF MISSOURI TERRITORY; comprising, an Elucidation "of the title of the United States to Louisiana:—Constitution of the United States: "Treaty of Session:—Organic Law:—Laws of Missouri Territory, *(alphabetically "arranged)*:—Spanish Regulations for the Allotment of Lands:—Laws of the United States. for adjusting Titles to Lands, &c., To which are added: A variety of "Forms, useful to Magistrates. By Henry S. Geyer."

In conformity to the act of Congress of the United States, entitled, "An Act for the "encouragement of learning, by securing the copies of Maps, Charts and Books to the "authors and proprietors of such copies, during the times therein mentioned." And also, to the act entitled, "An Act supplementary to an act entitled, "An Act for the encouragement of learning, by securing the copies of Maps, Charts and Books, to the "authors and proprietors of such copies during the time therein mentioned; and extending the benefits, thereof, to the arts of designing, engraving and etching, Historical and other Prints."

J. V. GARNIER, CLERK,
Missouri Territory, N. C.

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Containing Forms.

AN ELUCIDATION OF THE TITLE OF THE UNITED STATES, TO LOUISIANA.

Extract from the introduction to the volume of Land Laws, compiled in virtue of a resolution of congress, of the 27th April, 1810.

The treaties with foreign nations by which territory has been acquired, or which relate to boundaries, are those of 1783 and 1794, with Great Britain, of 1795, with Spain, and of 1803, with France.

The treaty of peace (of 1783) with Great Britain, which designated the boundaries of the United States, left however, some unsettled points. The question relative to the true river St. Croix, the eastern boundary of the United States, has been determined in pursuance of the treaty of 1794. That respecting the rights of the two nations over certain islands at or near the mouth of that river, has not yet been adjusted. But as the disputed territory in both cases belongs to the state of Massachusetts, neither of those questions affects the public lands of the United States. The same observation applies to certain islands in the river St. Lawrence, which continue to be claimed by Great Britain: and which are presumed to belong to the state of New York. The claims of the two nations to same other islands in the lakes and rivers west of that state, have not yet been adjusted. But the principal undecided question arising from that treaty, relates to that part of the boundary therein described as a line drawn due west, from the most northwestern point of the lake of the Woods, to the river Mississippi. It is ascertained that a line drawn in that manner cannot intersect that river, which does not extend as far northward as the latitude of the northwestern extremity of the lake of the Woods. And nothing more was agreed on in that respect by the treaty of 1794, than a mutual engagement to make a survey of the country, and to regulate by negotiation the boundary line, according to justice, mutual convenience, and the intent of the treaty of 1783.

The southern boundary of the United States, was, by the same treaty, fixed at the thirty-first degree of north latitude. But Great Britain having, by her treaty of the same date with Spain, ceded to that power West Florida, which, under the British government, extended as far north as the Yasous river, Spain, then in possession of the country between that river and the thirty-first degree of north latitude, refused at first to deliver it. Yet the title of the United States was indisputable: for their provisional treaty with Great Britain, a public instrument signed on the thirtieth of November, 1782, and which was to take effect as soon as peace should be made between Great Britain and France, had already established the thirty-first degree of latitude as the southern boundary of the said states. Spain, therefore, when receiving Florida from Great Britain, a cession which cannot bear an earlier date than the twentieth of January, 1783, the day on which the preliminary articles of her treaty of peace were signed, accepted that province with the boundary thus previously established; the territory lying north of the thirty-first degree, which might, prior to the thirtieth of November, 1782, have made part of West Florida, having, on that day with the knowledge of Spain, been ceded by Great Britain to the United States. Spain did accordingly acquiesce, after a delay of some years. She made no cession of territory by the treaty of 1795, which simply, and without reserve or exception, recognizes the same boundaries which had been fixed by the treaty of 1783, between the United States and Great Britain.

The United States, by the treaty of 1803, with France, acquired Louisiana, without any direct definition of its boundaries, but as fully and in the same manner as it had been acquired by France from Spain, in virtue of the treaty of St. Ildefonso, of the first of October, 1800. By this treaty Spain had retroceded Louisiana to France, "with the same extent that it then had in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states."

By the grant of Louis 14 to Crozat, dated fourteenth of September, 1712, all the country drained by the waters emptying directly or indirectly into the Mississippi, is included within the boundaries of Louisiana. The discovery of that river by the French, the general principles adopted by the European nations in relation to the rights of discovery, the publicity of the grant, and the long acquiescence of Spain, establish the claim of the United States to that extent. But the western boundary on the sea shore, and south of the waters emptying into the Red River, is still a subject of controversy, between the two nations; the territory called by Spain "Province of Texas" being claimed by both. The claim of France, now transferred to the United States, extended at least as far west as the bay of St Bernard, in virtue of the settlement made there by La Salle, in 1685, in the vicinity of the river Guadeloupe, at a time when Spain occupied no part of the territory east of the Rio Norte. That settlement was destroyed, and notwithstanding the repeated orders of the French government, was not resumed by the local authorities. In the mean while in (1717) the Spaniards sent some priests among the Indians, and shortly after established a small military post at Adayes, afterwards transferred to Nogodoches, on which rests their claim to the country east of La Salle's settlement. By an arrangement made in 1806, by the commanding officers in that quarter, it was agreed that for the present the Spaniards should not cross the Sabine, and that the Americans should not extend their settlements as far as that river. And in order to prevent any collisions, until the difference should be finally adjusted, instructions have been given that the public lands should not be surveyed west of a meridian passing by Natchitoches.

East of the Mississippi, the United States claim, by virtue of the treaty of 1803, all the territory south of the thirty-first degree of north latitude, and extending eastwardly to the small river Perdido, which lies between Mobile and Pensacola, and was, when Louisiana formerly belonged to France, the boundary between that colony and the Spanish province of Florida. That territory, together with the residue of Louisiana, east of the Mississippi, was by the treaty of 1763, ceded by France to Great Britain, who by the same treaty, acquired also Spanish Florida. The preliminary articles of that treaty were signed on the third day of November, 1762; and, on the same day, France, by a separate act, ceded to Spain all the residue of Louisiana west of the Mississippi, and including the city and island (so called) of New Orleans. By the treaties of 1783 Great Britain ceded to the United States all that part of the former colony of Louisiana east of the Mississippi, which lay north of the 31st degree of north latitude; and to Spain, under the name of east and west Florida, both that part of Louisiana east of the Mississippi, which lay south of that parallel of latitude, and the old Spanish province of Florida. The thirty-first degree of latitude was, by the subsequent treaty of 1795, between the United States and Spain, confirmed as the boundary between the possessions of the two nations. The title of the United States to the territory in question, under the treaties of St. Ildefonso, and of 1803, is fully established by those facts.

Louisiana was retroceded to France "with the same extent that it then had in the hands of Spain;" and the territory in question, by whatever name Spain chose to call it, was then substantially in her hands.

Louisiana was retroceded "with the same extent that it had when France possessed it;" and not only was that territory part of Louisiana when France possessed it, but, she never owned that province a single day without that territory as part of it. For, as has been stated, she ceded, on the same day, the eastern part of Louisiana to England, and the western part to Spain.

Louisiana was retroceded "such as it should be after the treaties subsequently entered into between Spain and other states:" and Spain never had, since she acquired Louisiana in 1762, made any treaties relative to Louisiana but that of 1783 with Great Britain, and that of 1795 with the United States: she had entered into no treaty whatever which effected Louisiana *west* of the Mississippi. This member of the description can, therefore, only apply to the territory in question *east* of the Mississippi; and there it has full effect, the territory having been acquired by Spain by her treaty of 1783 with Great Britain, and its boundaries having been finally established by her treaty of 1795 with the United States. "Louisiana such as it should be," &c. can only mean, including east Louisiana as restored by the treaty of 1783, but extending no further north than the southern boundary of the United States as recognized by the treaty of 1795.

The spirit of the treaty equally supports the construction necessarially derived from its letter. Spain retrocedes to France the colony which France had ceded in 1762, and she must therefore yield all in her possession which France had formerly given up. The cession by France of West Louisiana to Spain, was to compensate for the loss of Florida. The cession of East Louisiana to England was to make, together with Florida, an equivalent for Cuba, which on that condition was restored to Spain. France ceded the whole for the benefit of Spain. And Spain having recovered Florida by the treaty of 1783, having herself ultimately lost nothing; it is a natural consequence, that France, in obtaining a restrocession, should take back all she had lost for the sake of Spain. It is hardly necessary to add, that no private explanation between those two nations, made subsequent to the treaty of San Ildefonso, can effect the right of the United States derived from a public treaty: such supposed explanation not having been communicated to them by France, when, the treaty of 1803 was concluded, nor even afterwards by Spain, when she acquiesced in the acquisition of Louisiana by America.

CONSTITUTION OF THE UNITED STATES.

We, the People of the UNITED STATES, in order to form a more perfect Union, establish Justice, insure Domestic Tranquility, provide for the Common Defence, promote the General Welfare, and secure the blessings of Liberty to Ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of AMERICA.

ARTICLE 1.

SECTION 1.

Legislative power.

ALL legislative powers herein granted shall be vested in a CONGRESS of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2.

House of Representatives.

1. The House of Representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualification of Representatives.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representation and taxation to be apportioned.

Census.

Ratio.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of *New-Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode-Island* and *Providence Plantations* one, *Connecticut* five, *New-York* six, *New-Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North-Carolina* five, and *Georgia* three.

Vacancies.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Speaker.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

Of the senate.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

To be divided into classes.

Vacancies.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Qualification of Senators.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Preſident of Senate.

4. The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Preſident pro tem. & officers.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

To try impeachments, &c.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in caſe of impeachment.

7. Judgment in cases of impeachment shall not extend further than to a removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to

indictment, trial, judgment, and punishment, according to law.

SECTION 4.

Manner of electing members.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Congreſs to aſſemble annually.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

Powers of each houſe.

1. Each house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Rules.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member.

Journals to be kept and publiſhed.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Adjournment.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6.

Compenſation and privileges of members

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Incapacities.

2. No senator or representative shall, during the

time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7.

Revenue bills.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Form of proceeding in the enacting of laws.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Joint resolutions, orders, &c.

3. Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

Powers of Congreſs.

The congress shall have power—

Taxes, &c.

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common de-

fence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

Borrow money.

2. To borrow money on the credit of the United States:

Commerce.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

Natural'n. and bankruptcies.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

Coin.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

Puniſh counterfeiters.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

Poſt offices, &c.

7. To establish post offices and post roads:

Arts and ſciences.

8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right of their respective writings and discoveries:

Inferior courts.

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

Declare war, &c.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

Armies.

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years.

Navy.

12. To provide and maintain a navy:

Regulation of army & navy

13. To make rules for the government and regulation of the land and naval forces:

Calling forth militia.

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

Organizing &c. militia.

15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of gov-

ernment of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—and

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.

Limitations of the powers of congress.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*

Habeas corpus.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Attainder, ex poſt facto.

3. No bill of attainder, or ex post facto law shall be passed.

Direct tax.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Export duty and commerce.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

Expenditures.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.

Titles of nobility, presents&c

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.†

SECTION 10.

Powers withdrawn

1. No state shall enter into any treaty, alliance, or

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* *See article 5, clause 1.* † *See amendments article 13.*

from the ſtates individually.

confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in the payment of debts; pass any bill of attainder, expost facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Powers which the states can exercise only under the sanction of congress.

2, No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be abolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2.

SECTION 1.

The executive power.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

Electors of president and vice president.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Meeting of the electors and their proceedings.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the Senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such ma-

*jority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president, But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.**

Time of choosing electors.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Who may be elected president.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constition, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Vacancy, &c.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Presidents compensation.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affimation:

His oath,

"I DO SOLEMNLY SWEAR (or affirm) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF

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* *Annulled. See amendments, article 12.*

THE UNITED STATES, AND WILL, TO THE BEST OF MY ABILITY, PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES."

SECTION 2.

Powers and duties of the preſident.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Making treaties.

Appointing ambaſſadors and other officers.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Filling va- vancies.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate. by granting commissions which shall expire at the end of their next session.

SECTION 3.

Preſident to give information and recommend meaſures.

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

How the preſident may be removed,

1. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors,

ARTICLE 3.

SECTION 1.

Of the judicial power.

Judges.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.

Extent of the judicial power.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Orignal and appellate jurisdiction of the supreme court.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

Of trials for crimes.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3.

Of treaſon,

Definition.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Puniſhment.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall

work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE 4.

SECTION 1.

Faith to be given to public acts.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.

Privileges of citizens.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives from juſtice

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Perſons held to ſervice, &c.

3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.

New ſtates may be admitted.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Diſpoſal of territory.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States; or of any particular state.

SECTION 4.

Guarantee and protection of ſtates.

1. The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE 5.

Of amendments to the conſtitution.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousend eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE 6.

Former debts and engagements valid

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Conſtitution, laws, and treaties of U. S.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath to ſupport the conſtitution.

No religious teſt.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE 7.

When this conſtitution ſhall take effect.

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth.

In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
president and deputy from Virginia.

NEW HAMPSHIRE.
John Langdon,
Nicholas Gilman.
MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.
CONNECTICUT.
William Samuel Johnson,
Roger Sherman.
NEW YORK.
Alexander Hamilton.
NEW JERSEY.
William Livingston,
David Brearly,
William Paterson,
Jonathan Dayton.
PENNSYLVANIA.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

DELEWARE.
George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.
MARYLAND.
James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.
VIRGINIA.
John Blair,
James Madison, jun.
NORTH CAROLINA.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson,
SOUTH CAROLINA.
John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.
GEORGIA.
William Few,
Abraham Baldwin.

Attest, WILLIAM JACKSON, *secretary.*

IN CONVENTION,

MONDAY, SEPTEMBER 17th, 1787.

Present: the states of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pensylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

1. *Resolved,* That the preceding constitution be laid before the United States in congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in congress assembled.

2. *Resolved*, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled, should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the president; and the time and place for commencing proceedings under this constitution. That after such publication, the electors should be appointed and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed, and directed, as the constitution requires, to the secretary of the United States, in congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the senate, for the sole purpose of receiving, opening, and counting the votes for president; and, that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution.

By the unanimous order of the convention,

GEORGE WASHINGTON, *president*.

WILLIAM JACKSON, *secretary*.

IN CONVENTION,

SEPTEMBER 17th, 1787.

SIR,

1. WE have now the honor to submit to the consideration of the United States in congress assembled. that constitution which has appeared to us the most adviseable.

2. The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the union: but the impropriety of delegating such extensive trust to one body of men, is evident; hence results the necessity of a different organization.

3. It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society,

must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion, this difficulty was increased by a difference among the several states as to their situation, extent, habits and particular interests.

4. In all our deliberations on this subject, we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration; seriously and deeply impressed on our minds, led each state in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

5. That it will meet the full and entire approbation of every state, is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected. we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. With great respect, we have the honor to be, sir, your excellency's most obedient and humble servants.

By unanimous order of the convention.

GEORGE WASHINGTON, *president.*

His excellency the president of Congress.

[*The conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; congress, at the session begun and held at the city of New York, on Wednesday, the 4th of March,* 1789, *proposed to the legislatures of the several states* *twelve amendments, ten of which only were adopted. They are the ten first following.*]

AMENDMENTS TO THE CONSTITUTION.

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE 2.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the U. States, than according to the rules of the common law.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE 9.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE 12.*

1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed;

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* *See ante, art. 2. sec. 1, clause 3, page 7.*

and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

ARTICLE 13.

[See, as connected with this subject, ante, art. 1, sec. 9, clause 7, page 6.]

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

* * *

Treaty between the United States of America and the French republic.

Desire of the parties to remove all source of misunderstanding relative

The president of the U. States of America, and the first consul of the French republic, in the name of the French people, desiring to remove all source of

Le premier consul de la république Française, au nom du peuple Français, et le president des Etats Unis d'Amérique, désirant prévenir tout sujet de mesin-

misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemiaire, an 9 (30th September, 1800) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid the 27th October, 1795, between his catholic majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their plenipotentiaries, to wit, the president of the United States of America, by and with the advice and consent of the senate of the said states, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said states, near the government of the French republic; and the first consul in the name of the French people, the French citizen Barbe Marbois, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

Art. 1. Whereas, by the article the third of the treaty concluded at St. Il-

telligence relativement aux objets de discussion mentionnés dans les articles 2 et 5 de la convention du 8 Vendémiaire, an 9, (30 Septembre 1800,) et relativement aux droits reclamés par les Etats Unis en vertu du traité conclu à Madrid le 27 Octobre 1793, entre S. M. Catholique et les dits Etats Unis: et voulant fortifier de plus en plus les rapports d'union et d'amitié qui, à l'époque de la dite convention, ont été heureusement rétablis entre les deux états, ont respectivement nommé pour plénipotentiaries, savoir: le premier consul au nom du peuple Français, le citoyen françois Barbé Marbois, ministre du trésor public; et le président des Etats Unis d'Amerique, par et avec l'avis et le consentement du sénat des dits etats, Robert R. Livingston, ministre plenipotentiare des Etats Unis, et James Monroe, ministre plenipotentiare et envoyé extraordinaire des dits etats, auprés du gouvernement de la république Française: Lesquels après avoir fait l'échange de leurs pleinspouvoirs sont convenus des articles suivants:

Art. 1. Attendu que par l'article 3 du traité conclu à St. Ildephonse le 9 Ven-

to the construction of the treaty of Madrid, of the 27th October, 1795, &c.

And to strengthen the union and friendship of the two nations

Retrocession of Louisiana by

Spain to France ſtated.

defonso, the 9th Vendemiaire an 9, (1st October, 1800,) between the first consul of the French republic and his catholic majesty, it was agreed as follows: "His catholic majesty promises and engages on his part, to retrocede to the French republic,

Consideration of the retroceſſion

six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when Frnce possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states." *And whereas*,

Title of France inconteſtable.

as, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory: The first consul of the French republic desiring to give to the United States a strong proof of his friendship,

Ceſſion from France to U. States.

doth hereby cede to the said United States, in the name of the French republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been required by the French republic in virtue of the above mentioned

démiaire an 9, (1r. Octobre, 1800,) entre le premier consul de la république Française et sa majesté catholique, il a été convenu ce qui suit: "Sa majesté catholique promet et s'engage de son côté, à rétrocéder à la république Française, six mois aprés l'exécution pleine et entière des conditions et stipulation ci-dessus, relatives à son altesse royale le duc de Parme, la colonie ou province de la Louisiane, avec la même étendue qu'elle a actuellement entre les mains de l'Espagne, et qu'elle avait lorsque la France la possédait, et telle qu'elle doit être d'après les traités passés subséquemment entre l'Espagne et d'autres etats."

Et comme par suite du dit traité, et spécialement du dit article 3, la république Française a un titre incontestable au domaine et à la possession du dit territoire, le premier consul de la république désirant de donner un témoignage remarquable de son amitié aux dits Etats Unis, il leur fait, au nom de la république Française, cession, à toujours et en pleine souveraineté, du dit territoire, avec tous ses droits et appurtenances, ainsi et de la manière qu'ils ont été acquis par la république Française, en vertu du traité susdit, conclu avec sa majesté catholique.

treaty, concluded with his catholic majesty.

Art. 2. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

Art. 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

Art. 4. There shall be

Art. 2. Dans la cession faite par l'article précédent sont compres les isles adjacentes dépendantes de la Louisiane, les emplacemens et places publiques, les terreins vacans, tous les bâtimens publics, fortifications, cazernes et autres édifices qui ne sont la propriété d'aucun individu. Les archives, papiers et documens directement relatiff au domaine et à la souveraineté de la Louisiane et dépendances, seront laisses en la possession des commissaires des Etats Unis, et il sera, ensuite, remis des expéditions en bonne forme aux magistrats et administrateurs locaux, de ceux des dits papiers et documents qui leur seront nécessaires.

What is included in the ceſſion by the preceding article.

Art. 3. Les habitants des territories cédés seront incorporés dans l'union des Etats Unis et admis, aussitôt qu'il sera possible, d'après les principes de la constitution fédérale, à la jouissance de tous les droits, avantages et immunités des citoyens des Etats Unis, et en attendant, ils seront maintenus et protégés dans la jouissance de leurs libertés, propriétés, et dans l'exercice des religions qu'ils professent.

Inhabitants of the ceded territory to be incorporated in the union, upon the principles of the federal conſtitution.

Art. 4. Il sera envoyé

A commiſſary to be ſent from France to receive the province of Louiſiana from the Spaniſh officers, and to paſs it over to the U. States.

sent by the government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his catholic majesty the said country and its dependencies, in the name of the French republic, if it has not been already done, as to transmit it in the name of the French republic to the commissary or agent of the United States.

de la part du gouvernement Français un commissaire à la Louisiane, à l'effet de faire tous les actes nécessaires, tant pour recevoir des officiers de sa majesté catholique, les dits pays, contrées et dépendances, au nom de la république Français, si la chose n'est pas encore faite, que pour les transmettre, au dit nom, aux commissaires ou agens des Etats Unis.

Period of ſurrendering the military poſts &c. to the U. States.

Art. 5. Immediately after the ratification of the present treaty by the president of the United States, and in case that of the first consul shall have been previously obtained, the commissary of the French republic shall remit all the military posts of New-Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the president to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

Art. 5. Immédiatement après la ratification du présent traité par le président des Etats Unis et dans le cas où celle du premier consul aurait eu préalablement lieu, le commissaire de la république Française remettra tous les postes militaires de la Nouvelles Orléans, et autres parties du territoire cedé, au commissaire ou aux commissaires nommés par le président, pour la prise de possession. Les troupes Français ou Espagnoles qui s'y trouveront, cesseront d'occuper les postes militaires du moment de la prise de possession, et seront embarquées aussitôt que faire se pourra, dans le courant des trois mois qui suivront la ratification du traité.

ART. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ART. 6. Les Etats Unis promettent d'exécuter les traités et articles qui pourraient avoir été convenus entre l'Espagne et les tribues et nations Indigènes, jusqu'à ce que, du consentement mutuel des Etats Unis, d'une part, et des Indigènes, de l'autre, il y ait été substitué tels autres articles qui seront jugés convenables.

The United States to execute the treaties of Spain with the Indians &c.

ART. 7. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve

ART. 7. Comme il est réciproquement avantageux au commerce de la France et des Etats Unis d'encourager la communication des deux peuples, pour un tems limité dans les contrées dont il est fait cession, par le présent traité, jusqu'à ce que des arrangemens généraux relatifs au commerce des deux nations, puissent être convenus, il a été arrêté entre les parties contractantes, que les navires Français, venant directement de France ou d'aucune de ses colonies, uniquement chargés des produits des manufactures de la France et de ses colonies et les navires Espagnols

The veſſels of France and Spain, laden with the productions of their reſpective countries, and entering ports of Louiſiana, entitled to the ſame privileges for twelve years, as veſſels of the United States, from France or Spain, entering the same ports.

years in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than those paid by the citizens of the United States.

No other nation entitled to the ſame privileges during the ſaid period of 12 years.

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory: the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is, however, well understood, that the object of the above article is to favor the manufactures, commerce, freight, and navigation of France and of Spain, so far

Object of the indulgence to French and Spaniſh veſſels.

venant directement des ports d'Espagne, uniquement chargées des produits des manufactures de l'Espagne et de ses dites colonies, seront admis, pendant l'espace de douze années, dans le port de la Nouvelle Orléans, et dans tous les autres ports légalement ouverts en quelque lieu que ce soit des territoires *cédés*; ainsi et de la manière que les navires des Etats Unis, venant de France et d'Espagne, ou d'aucune de leur colonies, sans *être* sujets à d'autres ou plus grand droits sur les marchandises, ou d'autres ou plus grands droits du tonnage que ceux qui sont payés par les citoyens des Etats Unis. Pendant l'espace de tems ci-dessus *mentionné*, aucune nation n'aura droit aux mêmes privilèges dans les ports du territoire *cédé*.

Lés douze *années* commenceront trois mois après l'echange des ratifications, si il a lieu en France, ou trois mois après qu'il aura *été* notifié à Paris au gouvernement Français, s'il a lieu dans les Etats Unis.

as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

Il est bien entendu que le but du présent article est de favoriser les manufactures, le commerce à frêt et la navigation de France et de l'Espagne, en ce qui regarde les importations qui seront faites par les Français et par les Espagnols dans les dits ports des Etats Unis, sans qu'il soit rien innové aux règlemens concernant l'exportation des produits et marchandises des Etats Unis, et aux droits qu'ils ont de faire les dits règlemens.

After the expiration of the 12 years, the veſſels of France &c.

ART. 8. In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

ART. 8. A l'avenir et pour toujours après l'expiration des douze années susdites, les navires Français seront traités sur le pied de la nation la plus favorisée, dans le ports ci-dessus mentionnés.

A particular convention providing for the payment of debts to citizens of the United States, to be ratified herewith.

ART. 9. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French republic, prior to the 30th of September, 1800, (8th Vendemiaire, 9,) is approved, and to have its execution in the same manner as if it had been inserted in the present treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another particular con-

ART. 9. La convention particulière signée aujourdhui par les ministres respectifs ayant pour objet de pourvoir au payement des créances dues aux citoyens des Etats Unis par la république Française anterieurement au 8 Vendemiaire, an 9, (30 Septembre, 1800,) est approuvée pour avoir son exécution de la même manière que si elle etait inserée au present traité, et elle sera ratifié en la même forme et en même tems en sorte que l'une ne puisse l'être sans l'autre.

Un autre acte particulier

Another convention, relative to a definitive rule between the parties, to be ratified at the ſame time.

vention, signed at the same date as the present treaty, relative to a definitive rule between the contracting parties, is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly.

Ratifications to be exchanged in six months.

ART. 10. The present treaty shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, or sooner if possible.

In faith whereof, the respective plenipotentiaries have signed these articles in the French and English languages, declaring, nevertheless, that the present treaty was originally agreed to in the French language; and have thereunto put their seals.

Done at Paris, the tenth day of Floreal, in the eleventh year of the French republic, and the 30th April, 1803.

Robert R. Livingston, [L. S.]
James Monroe, [L. S.]
Barbe Marbois, [L. S.]

signé à la même date que le présent traité, relatif à un règlement définitif entre les puissances contractantes, est pareillement approuvé et sera ratifié en la même forme, en même tems et conjointement.

ART. 10. Le présent traité sera ratifié en bonne et due forme, et le ratifications seront échangées dans l'espace de six mois après la date de la signature de plénipotentiaires, ou plutôt s'il est possible.

En foi de quoi, les plénipotentiaires respectifs ont signé les articles ci-dessus tant en langue Française qu' en langue Anglaise, déclarant néanmois que le present traité a été originairement redigé et arrèté en langue Française, et ils y ont apposé leur sceau.

Fait à Paris, le dixième jour de Floréal, de l'an onze de la république Française et le trente Avril, 1803.

Barbe Marbois, [L. S.]
Robert R. Livingston, [L. S.]
James Monroe. [L. S.]

Convention between the United States of America and the French republic.

The president of the United States of America and the first consul of the

Convention entre les Etats Unis d'Amerique, et la république Français.

Le président des Etat Unis d'Amerique, et le premier consul de la république

Definitive regulations relative to the cession of Louiſiana.

French republic, in the name of the French people, in consequence of the treaty of cession of Louisiana, which has been signed this day, wishing to regulate definitively every thing which has relation to the said cession, have authorised to this effect the plenipotentiaries, that is to say: the president of the United States has, by and with the advice and consent of the senate of the said states, nominated for their plenipotentiaries, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said United States, near the government of the French republic; and the first consul of the French republic, in the name of the French people, has named as plenipotentiary of the said republic, the French citizen Barbe Marbois; who, in virtue of their full powers, which have been exchanged this day, have agreed to the following articles:

The United States engage to pay 60,000,000 francs to France, and to ſatisfy certain debts to their citizens.

ART. 1. The government of the United States engages to pay to the French government, in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by a-

Française, au nom du peuple Français, par suite du traité de cession de la Louisiane, qui à été signé aujourd'hui, et voulant régler définitivement tout ce qui est relatif à cette affaire, ont autorisé à cet effet, des plenipotentiaires, savoir: le president des Etats Unis, par et avec l'avis et le consentement du senat des dits etats, a nommé pour leurs plénipotentiaires Robert R. Livingston, ministre plénipotentiare des Etats Unis, et James Monroe, ministre plenipotentiaire et envoyé extraordinaire des Etats Unis auprès du governement de la république Française, et le premier consul de la république Française, au nom du peuple Francais, a nommé pour plénipotentiaire de la dite république, le citoyen françois Barbé Marbois; lesquels, en vertu de leurs pleinspouvoirs, dont l'echange a été fait aujourd'hui, sont convenus des articles suivans:

ART. 1. Le gouvernement des Etats Unis s'engager à payer au gouvernement Français, de la manière qui sera spécifié en l'article suivant, la somme de soixante millions de francs, indépendamment de ce qui sera fixé par une autre connother convention for the payment of the debts due by France to citizens of the United States.

A ſtock of $11,250,000 to be created, with an intereſt of 6 per cent payable in London, Amſterdam, or Paris.

Art. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent, per annum, payable half yearly in London, Amsterdam, or Paris, amounting, by the half year, to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French government to be paid at either place: the principal of the said stock to be reimbursed at the treasury of the United States, in annual payments of not less than three millions of dollars each; of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the government of France, or to such person or persons as shall be authorised to receive it, in three months at most after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the government of the United States,

The principal to be reimburſed at the treaſury of the United States, in annual payments of not leſs than three millions; the firſt payment to be made 15 years after the exchange of ratifications, &c.

vention, pour le payement des sommes dues par la France à des citoyens des Etats Unis.

Art. 2. Le payement des soixante millions de francs mentionnés au precedent article, sera effectué par les Etats Unis, au moyen de la creation d'un fonds de onze millions deux cent cinquante mille piastres, portant un intérêt de six pour cent par an, payable tous les six mois à Londres, à Amsterdam ou Paris, à raison de trois cent trente sept mille cinq cents piastres pour six mois, dans les trois places ci-dessus dites, suivant la proportion qui sera determinée par le gouvernement Français. Le principal du dits fonds sera remboursé par le tresor des Etats Uuis, par des payemens annuels, qui ne pourront être d'une somme moindre que trois millions de piastres par annee, et dont le premier commencera quinze ans après la date de l'échange des ratifications. Ce fonds sera transferé au gouvernement de France, ou à telle personne ou tel nombre de personnes qu'il chargera de le recevoir, dans les trois mois au plus tard après l'echange des ratifications de ce traite et après la prise de possession de la Louisiane, au nom du gouvernement dés Etats Unis,

It is further agreed, that if the French government should be desirous of disposing of the said stock to receive the capital in Europe, at shorter terms, that its measures for that purpose shall be taken so as to favor, in the greatest degree possible, the credit of the United States, and to raise to the highest price, the said stock.

Il est en autre convenu que si le gouvernement Français etait dans l'intention de disposer des dit fonds, et d'en toucher le capital en Europe, à des epoques rapprochees, les operations qui auront lieu seront conduites de la manière la plus favorable au credit des Etats Unis et la plus propre à maintenir le prix avantageux du fonds qui doit être cree.

If the French government be deſirous of ſelling the ſtock in Europe, it engages to do it upon the beſt terms for the United States.

Art. 3, It is agreed that the dollar of the United States, specified in the present convention, shall be fixed at five francs $\frac{3333}{10000}$, or five livres eight sous tournois.

Art. 3. La piastre ayant cours de monnaie dans les Etats Unis, il est convenu que dans les comptes auxquels la presente convention donnerà lieu, le rapport de la dite monnaie avec le franc, sera invariablement fixe à cinq francs $\frac{3333}{10000}$, ou cinq livres huit sols tournois.

The value of the dollar of the United States refered to, fixed at 5 livres 8 ſous tournois.

The present convention shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months, to date from this day, or sooner if possible.

La present convention sera ratifie en bonne et due forme, et les ratifications seront echangees dans l'espace de six mois, à dater de ce jour, ou plutôt s'il est possible.

Ratifications to be exchanged in six months.

In faith of which, the respective plenipotentiaries have signed the above articles both in the French and English languages, declaring nevertheless, that the present treaty has been originally agreed on and written in the French language; to which they have hereunto affixed their seals,

En foi de quoi, les plenipotentiaires respectifs ont signe les article ci-dessus, tant en langue Française qu'en langue Anglaise, declarant neanmoins, que le present traite à ete originairement, redige et arrête en langue Française, et ils y ont appose leurs sceaux.

Done at Paris, the tenth of Floreal, eleventh year of the French republic, (30th April, 1803.)	Fait à Paris, dixième jour de Floreal, de l'an onze de république Française et le trente Avril, 1803.
Robert R. Livingston, [L. S.]	*Barbe Marbois,* [L. S.]
James Monroe, [L. S.]	*Robert R. Livingston,* [L. S.]
Barbe Marbois, [L. S.]	*James Monroe.* [L. S.]

ORGANIC LAW.

CHAPTER I.

AN ACT Providing for the government of the territory of Missouri.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the territory heretofore called Louisiana shall hereafter be called Missouri, and that the temporary government of the territory of Missouri shall be organized and administered in the manner hereinafter prescribed.

Louisiana to be called Missouri.

Sec. 2. *And be it further enacted,* That the executive power shall be vested in a governor, who shall reside in the said territory; he shall hold his office during the term of three years, unless sooner removed by the President of the United States; shall be commander in chief of the militia of the said territory; shall have power to appoint and commission all officers civil and of the militia, whose appointments are not herein otherwise provided for, which shall be established by law; shall take care that the laws be faithfully executed; shall have power to grant pardons for offences against the said territory, and reprieves for those against the United States, until the decision of the President of the United States thereon shall be made known; shall have power on extraordinary occassions to convene the general assembly, and he shall ex-officio be superintendant of Indian affairs.

Governor; tenure of office, general powers, &c.

Sec. 3. *And be it further enacted,* That there shall be a secretary, whose commission shall continue in force for four years, unless sooner revoked by the President of the United States; he shall reside in said territory; it shall be his duty, under the direction of the governor, to record and preserve all the proceedings and papers of the executive, and all the acts of the general assembly, and to transmit authentic copies of the same every

Secretary.

His duty.

six months to the President of the United States. In case of a vacancy of the office of governor, the government of the said territory shall be executed by the secretary.

Legislative power, &c.

Sec. 4. *And be it further enacted,* That the legislative power shall be vested in a general assembly, which shall consist of the governor, a legislative council and a house of representatives. The general assembly shall have power to make laws in all cases, both civil and criminal, for the good government of the people of the said territory, not repugnant to or inconsistent with the constitution and laws of the United States; and shall have power to establish inferior courts, and to prescribe their jurisdiction and duties;* to define the powers and duties of justices of the peace and other civil officers in the said territory, and to regulate and fix the fees of office, and to ascertain and provide for payment of the same, and for all other services rendered to the said territory, under the authority thereof. All bills having passed by a majority in the house of representatives, and by a majority in the legislative council, shall be referred to the governor for his assent, but no bill or legislative act whatever shall be of any force without his approbation.

Governor's aſſent to bills indiſpenſable.

Number of the legiſlative, council, &c.

Sec. 5. *And be it further enacted,* That the legislative council shall consist of nine members to continue in office *five* years, unless sooner removed by the President of the United States, any five of them shall be a quorum. *The members of the legislative council shall be nominated and appointed in the manner following; as soon as representatives shall be elected, they shall be convened by the governor as hereafter prescribed, and when met, shall nominate eighteen persons residents in the said territory one year preceeding their nominatioa,* holding no office of profit under the territory or the United States, the office of justice of the peace excepted, and each possessing in his own right two hundred acres of land therein, *and return the names to the President of the United States, nine of whom the President, by and with the advice and consent of the Senate, shall appoint and commission to serve as aforesaid; and when a vacancy shall happen in the legislative council, by death or removal from office, the house of representatives shall nominate two persons qualified as aforesaid for each vacancy, and return their names to the President of the United States, one of whom he, by and with the advice and consent of the Senate, shall appoint*

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* *See also Post chap.* 3, *sec.* 3.

and commission for the residue of the term: and every five years, four months at least before the expiration of the time of service of the members of the legislative council, the house of representatives shall nominate eighteen persons, qualified as aforesaid and return their names to the President of the United States, nine of whom shall be appointed and commissioned as aforesaid, to serve as members of the legislative council five years, if not sooner removed. No person shall be a member of the legislative council who hath not attained the age of twenty-five years.*

Houſe of Repreſentatives.

Ratio of repreſentation, &c.

Qualification of repreſentatives.

Supply of vacancies.

Qualifications of electors.

Sec. 6. *And be it further enacted,* That the house of representatives shall be composed of members elected every second year by the people of the said territory, to serve for two years. For every five hundred free white male inhabitants there shall be one representative, and so on progressively with the number of free white male inhabitants shall the right of representation increase until the number of the representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the general assembly. No person shall be eligible or qualified to be a representative, who shall not have attained to the age of twenty-one years, and who shall not have resided in the territory one year next preceeding the day of election, and who shall not be a freeholder within the county in which he may be elected; and no person holding any office under the United States or any office of profit under the territory shall be a representative. In case of vacancy by death, resignation, removal or otherwise of a representative, the governor shall issue a writ to the county, whenever a vacancy may be as aforesaid, to elect another person to serve the residue of the term.—That all free white male citizens of the United States, above the age of twenty-one years, who have resided in said territory twelve months next preceding an election, and who shall have paid a territorial or county tax, assessed at least six months previous thereto, shall be entitled to vote for representatives to the general assembly of said territory.

Firſt election.

Sec. 7. *And be it further enacted.* That in order to carry the same into operation, the governor of the said territory shall cause to be elected thirteen representatives, and for that purpose shall proceed, as circumstances may require, to lay off the parts of the said territory to which the Indian title hath been extinguished, into convenient counties, on or before the first Monday in October next, and give notice thereof throughout the same, and shall appoint the most convenient time and place within each of the said counties for holding the elections, and shall nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who shall have been elected. All subsequent elections shall be regulated by the general assembly, and the number of representatives shall be determined and the apportionment made in the manner herein before prescribed.

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* *The members of the legislative council are now elected by the people. See post chap.* 3, *sec.* 1.

Subſequent elections, &c.

Meeting of general aſſembly, &c.

Sec. 8. *And be it further enacted,* That the representatives elected as aforesaid, shall be convened by the governor, in the town of St. Louis on the first Monday in December next; and the first general assembly shall be convened by the governor, as soon as may be convenient, at St. Louis, after the members of the legislative council shall be appointed and commissioned. *The general assembly shall meet once in each year, at St. Louis, and such meeting shall be on the first Monday in December annually unless they shall by law appoint a different day.** The legislative council and house of representatives, when assembled, shall each choose a speaker and its other officers, and determine the rules of its proceedings. Each house shall sit on its own adjournments from day to day. Neither house shall during the session, without consent of the other, adjourn for more than two days, nor to any other place than that where the two houses shall be sitting. The members of the general assembly shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Mode of proceeding of each branch.

Privilege from arreſt.

Perſons entitled to vote for delegate to congreſs, &c.

Sec. 9. *And be it further enacted,* That all and every free white male person who, on the twentieth day of December, in the year one thousand eight hundred and three, was an inhabitant of the territory of Louisiana, and all free white male citizens of the United States, who, since the said twentieth day of December, in the year one thousand eight hundred and three emigrated, or who hereafter may emigrate to the said territory, being otherwise qualified according to the provisions of this act, shall be capable to hold any office of honor, trust or profit, in the said territory, under the United States, or under the said territory, and to vote for members of the general assembly and a delegate to Congress during the temporary government provided for by this act.

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* *This clause is now repealed, see post chap. 3, sec. 2, and chap. 4, sec. 2.*

Judicial power.

Sec. 10. *And be it further enacted,* That the judicial power shall be vested in a superior court, and in inferior courts and justices of the peace.* The judges of the superior court and justices of the peace shall hold their offices for the term of four years, unless sooner removed; the superior court shall consist of three judges who shall reside in the said territory, any two of whom shall constitute a court; the superior court shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all those that are capital; and original and appellate jurisdiction in all civil cases of the value of one hundred dollars: the said judges shall hold their courts at such times and places as shall be prescribed by the general assembly.† The sessions of the superior and inferior courts shall continue until all the business depending shall be disposed of, or for such time as shall be prescribed by the general assembly. The superior and inferior courts shall respectively appoint their clerks, who shall be commissioned by the governor and shall hold their offices during the temporary government of the said territory, unless sooner removed by the court.

Superior court.

Seſſions.

Clerks.

Grand and petit jurors

Sec. 11. *And be it further enacted* That all free male white persons of the age of twenty-one years, who shall have resided one year in the said territory, and are not disqualified by any legal proceeding, shall be qualified to serve as grand or petit jurors in the courts of the said territory; and they shall, until the general assembly thereof shall otherwise direct, be selected in such manner as the said courts shall respectively prescribe, so as to be most conducive to an impartial trial, and least burthensome to the inhabitants of the said territory.

Sec. 12. *And be it further enacted,* That the govern-

**A superior court established in Arkansas, post chap. 2, sec. 1 to 6. † See post chap. 3, sec. 3.*

or, secretary and judges for the territory of Missouri, authorised by this act, and all general officers of the militia, during the temporary government thereof, shall be appointed and commissioned by the President of the United States, by and with the advice and consent of the Senate; and the governor, secretary and judges shall respectively receive for their services the compensations established by law, to be paid quarter yearly out of the Treasury of the United States; the governor, secretary, judges, members of the legislative council, members of the house of representatives, justices of the peace, and all other officers civil and military, before they enter on the duties of their respective offices, shall take an oath or affirmation to support the constitution of the United States, and for the faithful discharge of the duties of their office; the governor before a judge of the supreme or a district court of the United States, or a judge of the said territory; the secretary and judges before the governor; the members of the legislative council and house of representatives before a judge of the said territory; and the justices of the peace and all other officers before such person as the governor shall appoint and direct.

Governor &c. to be appointed by the preſident.

How paid.

To take an oath.

Before whom.

Sec. 13. *And be it further enacted,* That the citizens of the said territory entitled to vote for representatives to the general assembly thereof, shall, at the time of electing their representatives to the said general assembly, also elect one delegate from the said territory to the Congress of the United States;* and the delegate so elected, shall possess the same powers, shall have the same privileges and compensation for his attendance in Congress, and for going to and returning from the same, as heretofore have been granted to and provided for a delegate from any territory of the United States.

Time of electing a delegate to congreſs.

His privileges and pay.

Sec. 14. *And be it further enacted,* That the people of the said territory shall always be entitled to a proportionate representation in the general assembly; to judicial proceedings according to the common law and the laws and usages in force in the said territory; to the benefit of the writ of habeas corpus. In all criminal cases the trial shall be by jury of good and lawful men of the vicinage. All persons shall be bailable unless for capital offences where the proof shall be evident

Rights ſecured to the people.

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*See post chap. 4, sec. 1 and 2.

Education.

or the presumption great. All fines shall be moderate, and no cruel or unusual punishment shall be inflicted. No man shall be deprived of his life, liberty or property, but by the judgment of his peers and the law of the land. If the public exigencies make it necessary for the common preservation to take the property of any person, or to demand his particular services, full compensation shall be made for the same. No ex post facto law or law impairing the obligation of contracts shall be made. No law shall be made which shall lay any person under restraint, burthen or disability, on account of his religious opinions, professions or mode of worship, in all which he shall be free to maintain his own, and not burthened for those of another. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be encouraged and provided for from the public lands of the United States in the said territory, in such manner as Congress may deem expedient.

Limitation of the powers of the general aſſembly.

Mississippi and Miſſouri &c. to be free.

Sec. 15. *And be it further enacted*, That the general assembly shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulation Congress may find necessary to make for securing the title in the bona fide purchaser: No tax shall ever be imposed on lands the property of the United States. The lands of non-resident proprietors shall never be taxed higher than those of residents. The Mississippi and Misouri rivers, and the navigable waters flowing into them, and the carying places between the same, shall be common highways and forever free to the people of the said territory and to the citizens of the United States, without any tax, duty or impost therefor.

Laws to continue in force &c.

This act not to vacate commiſſions.

Sec. 16. *And be it further enacted*, That the laws and regulations in force in the territory of Louisiana, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force until altered, modified or repealed by the general assembly. And it is hereby declared that this act shall not be construed to vacate the commission of any officer in the said territory, acting under the authority of the United States, but that every such commission shall be and continue in full force as if this act had not been made. And so much of an act, entitled "An act further providing for the government of the territory of

Louisiana," approved on the third day of March, one thousand eight hundred and five, and so much of an act, entitled "An act for erecting Louisiana into two territories and providing for the temporary government thereof," approved the twenty-sixth of March, one thousand eight hundred and four, as is repugnant to this act, shall from and after the first Monday in December next be repealed. On which first Monday in December next this act shall commence and have full force: *Provided*, so much of it as requires the Governor of said territory to perform certain duties previous to the said first Monday in December next shall be in force from the passage thereof.

Repugnant proviſions repealed.

This act to commence. Proviſo.

[*Approved, June 4, 1812.*]

CHAPTER II.

AN ACT for the appointment of an additional judge for the Missouri territory, and for other purposes.

BE it enacted by the senate and house of representatives of the United States of America in congress assembled, That there shall be appointed an additional judge for the Missouri territory, who shall hold his office for the term of four years, unless sooner removed, shall reside at or near the village of Arkansaw, and who shall possess and exercise within the limits of the late district of Arkansaw, as fixed and established while the same was a part of the territory of Louisiana, or as the limits shall be established by the general assembly of the Missouri territory, the jurisdiction now possessed and exercised in said district by the court of common pleas, as well as that possessed and exercised by the superior court within the said district, and to the exclusion of the original jurisdiction of the said court of common pleas and superior court within the same: *Provided always,* That the superior court, or any judge thereof, in pursuance of the laws now in force in said territory, or of any laws hereafter to be made for the purpose, shall have full power and authority to issue writs of error to the court established by this act; and said superior court shall have cognizance thereof, and also of all appeals for error in law in all causes in which appeals are by law allowed from the courts of common pleas to said superior court.

Aditional judge for the Miſori territory to be appointed to reſide at or near Arkanſaw.

Proviſo.

Sec. 2. *And be it further enacted,* That the said su-

By what rules judgements &c. may be reversed.

perior court is hereby authorised, upon the reversal of a judgment of the court established by this act, to render such judgment as the said court ought to have rendered, except where the reversal is in favor of the plaintiff in the original suit, and the debt or damages to be assessed are uncertain, in which case the cause shall be remanded for a final determination.

No writ of error to operate as a supersedeas, but upon certain conditions.

Sec. 3. *And be it further enacted*, That no writ of error shall operate as a *supersedeas*, unless the plaintiff in error shall give security, to be approved of by a judge of the superior court, to prosecute his writ to effect and pay the condemnation money and all costs, or otherwise abide the judgment which may be rendered on such writ of error.

Judge to be appointed under this act &c.

Sec. 4. *And be it further enacted*, That the judge to be appointed by virtue of this act, shall appoint a clerk of said court, who shall be commissioned by the governor, and hold his office during the temporary government of said territory, unless sooner removed by said judge.

Semi-annual terms of the court to be held at Arkansaw.

Sec. 5. *And be it further enacted*, That the said court established by this act shall hold two terms in each and every year in the said village of Arkansaw, to commence on the first mondays in April and September annually, and shall continue in session until all the business before it shall be disposed of: *Provided always*, That the general assembly of the said territory shall have power to alter the times and places of holding the said court.

Proviso.

Salary, &c. &c. of the judge.

Sec. 6. *And be it further enacted*, That the judge to be appointed by virtue of this act, shall receive the same salary, and payable in the same manner which is established by law for the judges of said superior court in the said territory of Missouri.

[*Approved, January* 27, 1814.]

CHAPTER III.

AN ACT to alter certain parts of the act providing for the government of the territory of Missouri.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the electors of the territory of Missouri, entitled to vote for members of the house of representatives of the territory at the time of electing the representatives to the general assembly, shall in each county in said

Electors to chuse members of legislative council.

territory elect one member of the legislative council to serve for two years and no longer, qualified according to the provisions of the fifth section of the "Act providing for the government of the territory of Missouri," passed June fourth, one thousand eight hundred and twelve, a majority of whom shall be a quorum, and shall possess the same powers as are granted to the legislative council by the said recited act: and in case of vacancy of a member of the legislative council by resignation or otherwise, the governor of the territory shall issue a writ to the county to elect another person to serve the residue of the term.

Biennial meetings of the general assembly to be held at St. Louis.

Sec. 2. *And be it further enacted,* That so much of the eighth section of the said recited act as requires the general assembly of said territory to meet once in each year be repealed, and the said general assembly shall meet once in every other year at St. Louis, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day:* *Provided,* That the governor for the time being shall have authority by proclamation to convene the general assembly whenever he shall deem the interest of the territory may require it.

Proviso.

Judges of the superior court may be required by the general assembly to hold superior and circuit courts &c.

Sec. 3. *And be it further enacted,* That the general assembly of the said territory shall be, and are hereby authorized to require the judges of the superior court of the said territory to hold superior and circuit courts, to appoint the times and places of holding the same, and under such rules and regulations as the general assembly may in that behalf prescribe, the circuit courts shall be composed of one of the said judges, and shall have jurisdiction in all criminal cases, and exclusive original jurisdiction in all those which are capital, and original jurisdiction in all civil cases of the value of one hundred dollars, and the superior and circuit courts shall possess and exercise chancery powers as well as common law jurisdiction in all civil cases; *Provided,* That there shall be an appeal in matters of law and equity, in all cases from the circuit courts to the superior court of the said territory.

Proviso.

Repeal of parts of former acts.

Sec. 4. *And be it further enacted,* That such part of the said recited acts as is repugnant to, or inconsistent with the provisions of this act, be, and the same is hereby repealed.

[*Approved, April* 29, 1816.]

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*See post chap. 4, sec. 2.

CHAPTER IV.

AN ACT further to regulate the Territories of the United States, and their electing delegates to Congress.

Term of service of delegate.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in every Territory of the United States, in which a temporary government has been, or hereafter shall be established, and which, by virtue of the ordinance of Congress of the thirteenth of July, one thousand seven hundred and eighty seven, or of any subsequent act of Congress, passed, or to be passed now hath, or hereafter shall have the right to send a delegate to Congress, such delegate shall be elected every second year for the same term of two years, for which members of the House of Representatives of the United States are elected; and in that House, each of the said delegates shall have a seat with a right of debating, but not of voting.*

Privileges.

Time of electing Delegate.

Sec. 2. *And be it further enacted*, That on the first Monday of August next, the citizens of the Territory of Missouri, qualified according to the act entitled "An act providing for the government of the Territory of Missouri"† shall elect a delegate to Congress; and it shall be the duty of the general assembly of the said territory to make provision by law for the annual or biennial meetings of the said general assembly, as the interests of the territory may in their opinion require: and such annual or biennial meeting shall be on the first Monday of December, unless they shall by law appoint a different day; and so much of any law or laws as are inconsistent with the provisions of this act shall be and the same are hereby repealed.‡

Meeting of legislature.

[*Approved, March 3, 1817.*]

[There may not appear to be much connection between the several acts arranged under this head, by their *titles*, yet it will be found that their *provisions* are so materially dependant on, and connected with, each other, that they are properly reduced under the same head.]

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* *Chap.* 1. *sec.* 13. *of this head contains a similar provision and also declares the compensation of the Delegate.*

† *See ante chap.* 1. *sec.* 6. *&* 9.

‡ *Ante chap.* 1. *sec.* 5-8 *&* 13. *Chap.* 3. *sec.* 2.

LAWS

OF

MISSOURI TERRITORY.

ADMINISTRATION.

Probate and administration by whom to be granted.

Sec. 1. It shall be the duty of the circuit courts in the several counties in this territory, in term time, and of the clerk in vacation, subject to the confirmation or rejection of said court, to take the proofs of last wills and testaments,* and to grant letters testamentary and letters of administration with or without any will annexed, and to do and perform every matter or thing enjoined on said court or clerk by law. *L. M. T. Dec. Sess.* 1814 *page* 111, *passed Jan.* 21, 1815.

Who to be preferred as administrator.

Sec. 2. Letters of administration shall be granted to the representatives of the intestate who apply for the same, preferring first the husband or wife and such others as are entitled to distribution,† or one or more of them, as the court or clerk in vacation shall consider will best manage and improve the estate: and if no such person apply for administration within sixty days after the death of the intestate, the court or clerk in vacation, may grant administration to any creditor who may apply for the same within ninety days after the death of the intestate; and if within that time no such application is made, then any other person the court, or clerk in vacation, may think fit. But if any will shall afterwards be produced and proved by the executor and shall apply for letters testamentary, the same shall be granted, in like manner as if the former had not been obtained. *Provided,* That if the husband or widow or any distributee after [having] been served with a citation issued by the court or clerk in vacation shall neglect to appear within thirty days after such service to take out letters of administration, such neglect

Will produced.

Persons entitled being cited and failing to appear.

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* *For the manner of taking probate, see title Wills and Testaments, Sec. 8, and following—where to be made, see post Sec. 4.*

† *For who are entitled to distribution, see Descent and Distribution.*

Renunciation.

shall be considered as a renunciation of such person to the administration. *ib. page* 140 *ib.*

Qualification as to age.

Sec. 3. No person can act as executor or administrator unless he be twenty one years of age or upwards. *ib. ib. ib.*

Probate and administration where granted.

Sec. 4. If any testator or intestate shall have a mansion house or known place of abode in any county, his will shall be proven before, or letters of administration granted by the circuit court of such county, in term time, or before the clerk of said court in vacation, subject to the revision of the said court; if he has no such place of residence and lands be devised in the will, or the intestate be possessed of lands, it shall be proved or administration granted in the county wherein the lands lie, or one of them if they shall lie in several counties. And if he has no such known place of residence, and there be no lands devised, or the intestate possessed of any lands, then the will may be proved or administration granted in the county where he dies, or where the greater part of the estate may be. And if he dies in no county in this territory, and there be no known estate in any county, administration may be granted or his will proved in any county in this Territory.* *ib. page* 153-4 *ib.*

Bond to be given by administrator of intestate's estate.

Form of condition.

Sec. 5. The said court on granting letters of administration to any person or persons of the goods and chattels of persons dying intestate, shall take a bond with two or more sufficient securities, respect being had to the value of the estate, in the name of the governor of the territory or his successors in office in the manner and form following, to wit: The condition of this obligation is such, that if the within bounden A. B. administrator (or administratrix as the case may be) of all and singular the goods, chattels, rights, and credits of C. D. deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, chattels, rights and credits of the said deceased, which have or shall come to the hands, possession or knowledge of him the said A. B. or into the hands and possession of any person or persons for him; and the same so made do exhibit or cause to be exhibited into the office of the circuit court for the county of at or before the day of next ensuing, and the same goods, chattels, rights and credits, and all other the goods, chattels, rights and credits of the said deceased, at the time of the death of the said deceased, which at any time after shall come to the hands or possession of the said A. B. or into the hands or possession of any other person or persons for him, do well and truly administer according to law; and further make or cause to be made a true and just account of his said administration at or before the day of and all the rest and residue of the said goods, chattels, rights and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed by the circuit court for the county, where the said administration is granted, and shall deliver and pay to such person or persons respectively, as the said court by their decree and sentence, pursuant to the true intent and meaning of this act, shall appoint and direct. And if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named, do exhibit the same into the office of the said court, making request to have it allowed and approved, and the said will is allowed and approved by said court, then if the said A. B, within bounden, being thereto requested, do render and deliver his said letters of administration, then this obligation to be void and of no effect, otherwise to remain in full force and effect. *ib. page* 111—112 *ib.*

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* *See note to Sec. 1 ante.*

Condition of a administration bond.

Sec. 6. It shall be the duty of the several courts granting letters of administration, before such letters be granted, to cause the person applying for administration, to state upon oath, to the best of his or her knowledge, if there are any heirs or legal representatives of the intestate in being, which statement shall be in writing, and subscribed by the party making the same. *ib. page* 129 *ib.*

Oath before granting letters of administration.

Sec. 7. And such person to whom administration is granted, shall also take before the court an oath or affirmation that the deceased died without a will as far as he knows or believes, and that he will well and truly administer all and singular the goods and chattels, rights and credits of the said deceased, and pay his debts as far as his goods, chattels, rights and credits will extend and the law direct. And that he will make a true and perfect inventory of all the goods, chattels, rights and credits, as also a just account when thereto required. *ib. page* 112 *ib.*

Oath of administrator.

Administration with the will annexed when and by whom to be granted.

Sec. 8. If the person named as executor, in any last will and testament, shall refuse to take on himself the executorship, the court or clerk in vacation as aforesaid may receive the proof of the will and grant letters of administration with the will annexed, to the person to whom administration would have been granted if there had been no will of the deceased.* *ib. ib.* 136 *ib.*

Oath of executors & administrators with the will annexed.

Sec. 9. Executors and administrators with the will annexed, shall take an oath before the court, or clerk in vacation as aforesaid, before granting a certificate of any probate of any will, that they will well and truly perform the last will and testament of the testator, by paying first his debts, and then the legacies contained in the said will, as far as his goods, chattels, rights and credits will extend, and the law charge them; and that they will make a true and perfect inventory of the said goods and chattels, rights; as also a just account when thereto required. *ib. ib. page* 136 *ib.*

Executor or administrator with the will annexed or de bonis non. Bond and oath.

Sec. 10. Executors and administrators with the will annexed or of goods not administered, shall give bond with security, and take an oath or affirmation as is provided with respect to administrators of intestates,† only changing such part thereof as the different circumstances of the case may require. *Provided*, That any testator by an express provision in his last will may direct that no security shall be given by his executors or administrators, except in cases provided for in the thirty ninth section of this act.‡ *ib. ib. page* 137 *ib.*

Admministration durante minore ætate, durante absentia, pendente lite or limited, when granted

Bond.

Sec. 11. During any contest about a will or in the absence of the executor or during the minority of the executor, the court may grant letters of administration during the minority or absence of such executor, or may appoint any person or persons to collect and preserve the estate of the decedent, until a probate of his will or administration of his estate be granted, taking bond and security for administering the estate of such testator well and truly during the minority or absence of the executor, or for collecting the estate and making an inventory thereof and safe keeping and delivering up the same when required thereto by the executor or administrator. *Ib. page* 139-140, *Ib.*

Letters heretofore grant-

Sec. 12. All letters of administration and letters tesed to be recorded.

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* *Ante Sec. 2 & 3.*

† *Bond ante Sec. 5 and Oath ante Sec. 6 & 7.*

‡ *See post sec. 42.*

Duty of clerk.

Copy of letters duly recorded to be evid'ence.

Not recorded, not to be received as evidence.

tamentary heretofore granted in pursuance of any law in force in this territory, shall be recorded in the clerks office of the circuit court of the respective counties where such letters of administration or testamentary were granted; and the respective clerks of the circuit courts, on receiving such letters of administration or testamentary for recording, shall proceed to record the same in a well bound book to be by him kept for that purpose, and the said clerk shall certify on said letters that the same have been recorded according to law. And a copy of the record of the said letters, recorded as aforesaid, shall have the same effect in law as the original could or might have, and no letters testamentary or letters of administration made before the taking effect of this act (1 July 1816) shall be admitted in evidence, in any court of law or equity, unless the same shall be recorded as herein before prescribed. *Ib.* 1815, *page* 42-43. *pass'd.* 20 *Jan. in force* 1st *July* 1816.

Letters hereafter granted to be recorded.

If not recorded not to be received in evidence.

Copies of recorded letters good evidence.

Clerk neglecting to record.

Penalty.

Sec. 13. All letters of administration and testamentary that shall be granted after the taking effect of this act, shall, before the same be delivered to the parties, be recorded by the clerk of the court granting the same, or by the clerk of the court if such letters were granted in vacation, in the same manner as provided by the first section of this act,* with respect to such letters heretofore granted, and if such letters be not recorded as aforesaid, they shall not be received in evidence in any court of this territory, copies of the record of letters of administration and letters testamentary recorded in pursuance of this section, under the seal of the office where the same were granted shall have the same effect in law as the original might or could have in law or equity. And if any clerk shall deliver such letters of administration or letters testamentary without recording the same, he shall forfeit to the party injured double the damages which he may have sustained for default of such record being made.† *Ib. page* 43. *Ib. Ib.*

Power of Executors before-probate.

Sec. 14. The power of executors over their testator's estate before probate of the will shall in no wise be restrained, but shall continue as heretofore. *Ib. Dec. sess.* 1814. *page* 139. *pass'd.* 21*st Jan.* 1815.

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* *Ante sec.* 1

† *Letters testamentary and of administration, granted out of the territory and duly authenticated, deemed good evidence, &c. see titles, Wills and Testaments, sec.* 1

Executor or administrator cannot resign

Sec. 15. No executor or administrator with or without the will annexed shall be at liberty to resign his administration or executorship. *Ib. page* 147 *Ib.*

Appraisers to be appointed.
To make appraisement of goods and chattels.
Return.
Inventory.
Wearing apparel &c. exempt.
Appraisors to list such goods.
To be taken as part of widows dower.

Sec. 16. Every clerk or court in vacation, on granting letters testamentary, or letters of administration, shall appoint three respectable disinterested householders, of the neighbourhood of the deceased, and not being of kin to such deceased or widow, who being sworn or affirmed before some justice of the peace for that purpose, shall truely and justly, to the best of their skill and abilities, view and appraise all the slaves, and all the personal estate to them produced; and shall return such appraisement under their hands to the court or clerk ordering the same. Which appraisement if signed by the executor or administrator may be considered as an inventory of such part of the estate as had heretofore come to his hands or possession; and in all cases where any person dies intestate leaving a widow, or widow and children, or children and no widow, such widow shall be entitled to keep her wearing apparel and such household goods, farming utensils, provisions and clothing necessary for the support and maintainence, of such widow, widow and children, or children as the appraisers shall exempt from inventory, they having special regard to the ability of such widow, or widow and children to provide and maintain herself and themselves.* And it shall be the duty of the court or clerk appointing appraisers to an intestates estate as aforesaid to direct them to make out a list or statement, signed by such appraisers, of all the household goods, farming utensils, and provisions and clothing by them exempted from inventory, together with the number of such family, which list and statement of articles it shall be the duty of such appraisers also to appraise and to lodge with the clerk or court, which list of articles and appraisement shall be considered and taken as forming a part of the widows dower, or be in lieu thereof, if the same shall amount to one third part of the said deceased's, estate, and such list or statement shall discharge the administrator from being accountable for the goods, effects and provisions so exempted as aforesaid. *ib. p.* 141-2 *ib.*

In cases of insolvency

Sec. 17. In all cases where the estate is insolvent or is indebted to the full amount of said estate, the widow if any shall be allowed to keep as her absolute property, her implements of industry, such as cards, wheels spun yarn of every kind, also all the cloth and clothing made up in the family, by said widow and family for their own use, and also such property, goods, wares and furniture as said widow may think proper, not to exceed the appraised value of one hundred and fifty dollars. *Ib. Dec. sess.* 1816. *page* 48, *pass'd. Jan.* 25. *in force April* 1st, 1817.

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* *Vide also post sec.* 17 & 18.

wife to have certain property.

Sec. 18. All executors and administrators where they have good cause to believe that the estate to which they are executors or administrators, is insolvent or otherwise indebted to the full amount of the estate after said estate is appraised, as required by law as above, shall deliver such articles as before recited in this act,* to the said widow and take her receipt for the same, which receipt shall be allowed said executor or administrator in their statements of said articles, and in all cases where it may be found by executors or administrators after delivering the property as above described to the said widow, that the said estate is not insolvent or indebted to the full amount of the estate, the said widow shall discount the amount of said receipt, by her given, to such executor or administrator as so much of her one third part or half of the estate of her deceased husband as the case may be, or may be allowed to remain after his just debts are paid. *Ib. page* 48. *Ib. Ib.*

Executors and administrators to deliver property and take widows receipt

Sec. 19. Each appraisor shall be entitled to one dollar per day for his attendance to be paid out of the estate of the deceased. *ib. Dec. sess.* 1814 *p.* 143. *pass'd* 21 *Jan.* 1815.

Appraisors compensation.

Sec. 20. Executors and administrators with the will annexed shall file their inventories and accounts within the same period respectively, as is provided with respect to administrators of intestates. *ib. p.* 139 *ib.*

Inventories and accounts.

Sec. 21. Inventories and appraisements may be given in evidence in any suit by or against the executor or administrator but shall not be conclusive for or against them, if other testimony be given that the estate was really worth or was bona fide sold for more or less than the appraised amount. *Ib. Ib. page* 142-3. *Ib.*

Inventories and appraisement how far and when evidence.

Sec. 22. Executors and administrators whether it be necessary for the payment of debts or not, shall, as

Sale of perishable goods

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* *Ante Sec.* 17.

when and how.

To take bonds and notes.

Which he may assign.

soon as convenient after they are qualified, sell at public sale all such goods of their testator or intestate, specific legacies excepted, as are liable to perish, be consumed or rendered worse by keeping, giving such credit as they shall judge best and the circumstances of the estate will admit of, taking bonds or promissory notes, with good security, of the purchasers, and shall account for such goods according to the sales, if more be sold than will pay the debts and expences. The executors and administrators may assign said notes for the surplus to those entitled to the estate and be discharged for so much. *Ib. page* 143. *Ib.*

Other personal estate when to be sold.

Slaves.

Proviso.

Sec. 23. If such perishable goods be not sufficient for the paying of debts and expences, the executors or administrators shall proceed to sell the other personal estate, disposing of the slaves last, until the debts and legacies be all paid; having regard to the specific legacies: *Provided*, That if any testator direct his estate not to be sold, the same shall be preserved in specie, unless a sale be necessary for the payment of debts; and if directed not to be appraised or sold, it shall be sufficient to return an inventory only. *Ib. Ib. page* 143. *Ib.*

Return of sale to be made.

Contents of returns.

When to be made.

Sec. 24. It shall be the duty of executors and administrators when they sell the personal property of their testator or intestate agreeable to the forty eighth section of the act to which this act is a suplement,* to deliver to the clerk of the court granting the letters testamentary or of administration, a complete list of the property sold, signed by the said executor or administrator, which list shall contain and describe the articles sold, the amount and name of the purchaser, and shall be delivered to the clerk of said court within sixty days after the said sale shall be completed.† *Ib. Dec. sess.* 1815. *page* 45-46. *passed* 20 *Jan. in force* 1, *July* 1816.

Sale of lands devised to be sold.

Sec. 25. The sale and conveyance of lands and tenements, to be sold in pursuance of any will, shall be made by the executors or such of them as shall undertake the execution of the same, or by the surviving executors or by the administrator with the will annexed, if no other person be appointed in such will for that purpose, or if the person so appointed shall refuse to perform the trust, or die before he shall have completed the same. *Ib.* 1814. *page* 144. *passed* 21 *Jan.* 1815.

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* *See ante, Sec.* 22—23.

† *Similar returns of sales made previous to* 1st *July* 1816, *are to be made within* 60 *days after that date, except where a list has been returned, or a final settlement made. See L. M. T. Dec. Sess.* 1815, *page* 46.

Sale of intestates lands How obtained.

Administrator to apply to superior court.

Court to order sale. Proviso.

Account of administration to be filed

Notice of sales.

Administrator to make return on oath &c.

Lands not liable for debts of intestates, in the hands of purchasers.

Sec. 26. If any person shall die intestate, being owner of lands and tenements within this territory, at the time of his or her death, but not sufficient personal estate and slaves to pay his or her just debts, in such case it shall and may be lawful for the administrator to apply to the superior court of the county where such lands and tenements may lie; which court shall order and direct, as they may think proper from time to time, for the defraying the just debts, the sale of such lands and tenements or any part thereof: *Provided*, That the superior court shall make no such order, unless the administrator shall, together with his petition, file a true and just account, upon his, her or their oath or affirmation, of all the intestates debts, which shall then be come to his, her or their knowledge together with the inventory, appraisement and list of sales. And before any such sale shall be made the said court shall order a sufficient number of advertisements to be made out by the clerk, giving notice of the lands to be sold, and of the time and place; which notice shall be delivered to the sheriff of the county where the land may lie, whose duty it shall be to put them up at the most public places in the county, at least twenty days before the time of sale. And the administrator making such sale shall bring his proceedings to the next superior court, to be holden for the county, after the sale made, together with an oath or affirmation that such administrator did not become a purchaser of such lands himself, that they were not purchased for his use, and that he is in no wise interested in the purchase thereof, and land, tenements and hereditaments so as aforesaid sold by order of the superior court, shall not be liable in the hands of the purchasers for the debts of the intestate.* *ib. page* 149-150. *ib.*

Testators land not devised to be sold.

Sec. 27. Where any person shall die having duly made his last will and testament and being owner of any lands and tenements in this territory, at the time of his death, but not sufficient personal estate to pay his or her just debts, and shall not, in or by his or her last will and testament, give power and authority to sell or dispose of his or her said real estate, for the payment

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* *Quere, as to judgments, see Judicial Proceedings, sec.* 64.

How sale may be obtained.

of such debt, it shall and may be lawful, in such case, for the executor or executors in said will named or any administrator with the will annexed, to apply to the superior court of the county where such lands or tenements lie, in the manner directed by the fifty eighth section of the act to which this act is a supplement,* which said court shall make such order as they may think proper, from time to time, for the defraying of the just debts, for the sale of such lands and tenements or any part thereof and proceed in the same manner for the sale of such lands as is mentioned and provided in the said act, for the sale of intestates real estate: *Provided always*, That before any such order of sale shall be made the executor or executors, administrator or administrators with the will annexed, shall give notice of his, her or their intention to apply for such order of sales, in one or more of the Gazettes published in this territory, for at least six weeks before, of which the court shall, before granting such order of sale, require due proof: *Provided always*, That nothing in this act contained shall be construed to affect the right, any widow may have, to dower in the estate of her deceased husband.† *Ib. Dec. sess.* 1816, *page* 46-7, *passed* 20 *Jan. in force* 1 *July*, 1816.

Notice of application to be published.

Saving to widow her dower.

When and how distribution and legacies to be paid.

Sec. 28. Executors and administrators shall not be compelled to make distribution or pay legacies, until one year after granting the administration or letters testamentary, unless the legacies specified be such kind of property as would be perishable or subject to injury if retained for one year. Nor shall administrators be compelled to make distribution or pay legacies at any time, until bond and security be given, by the person entitled to distribution or to a legacy, to refund due proportion of any debt or demand, which may afterwards appear against the estate, and costs attending the recovery of such debts:‡ *Provided*, That such debts and demands shall appear within five years after the granting the letters of administration or letters testamentary. *Ib. Dec. sess.* 1814. *page* 144, *passed* 21 *Jan.* 1815.

Legatees and distributees to give bond to refund &c.

Proviso.

Sec. 29. A widow entitled to dower under the act to which this act is a supplement,§ shall not be compelled to give bond before she receives her dower, and the circuit court shall have power to decree the payment of legacies and the distribution of distributive shares, on the parties entitled thereto, offering bond and security, as required by the act to which this act is a supplement,* and bonds given to executors and administrators, by legatees and distributees for refunding, shall not be considered in trust for creditors, but shall be for the indemnity of such executor or administrator. And if any executor or administrator shall refuse to pay a legacy or distributive share, according to the decree of the court, the court shall enter judgment for the amount thereof and issue execution thereon against such executor or administrator. *ib. Dec. sess.* 1815, *p.* 44-5, *pass'd* 20 *Jan. in force* 1 *July* 1816.

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* *Ante sec.* 26.

† *Widow's dower, see Descent & Distribution, sec.* 4-5.

‡ *See sec.* 29, *widow not to give bond.*

§ *For who is entitled to dower, see Descent and Distribution.*

Widow not to give bond to refund

Court may decree payment of legacies &c.

Bonds how considered

Executor or administrator refusing to pay on decree of court

Sec. 30. And debts and demands, which shall not be exhibited, within the said five years,† shall for ever afterwards be barred: *Provided also,* That the executor or administrator shall give notice to all creditors and legatees or distributees that they will be barred within the time aforesaid, unless they exhibit their respective demands to said executors or administrators within the time specified as aforesaid, such notice to be given in some public newspaper printed in this territory, and also in some newspaper printed in some neighbouring state or territory; to be continued in such paper for at least four weeks. Saving however to married women, infants, persons of unsound mind, persons imprisoned and persons beyond the limits of the boundaries of the United States, or in the military service of the United States during the war, the said term of five years, after their respective disabilities are removed, to exhibit their respective demands to said executors or administrators. *Dec. sess.* 1814, *p.* 144-5. *pass'd* 21 *Jan.* 1815.

Debts and demands barred by five years non claim.

Notice to be published four weeks in newspapers &c.

Saving to infants, married women &c.

Sec. 31. And no executor or administrators shall be compelled to pay debts within twelve months after the taking the letters of administration or letters testamentary as aforesaid. And if any person shall bring an action against any executor or administrator within twelve months as aforesaid, such person bringing such action, although he may obtain judgment for the amount of his debt or demand, shall not recover any costs of his suit: and no person shall take out an execution on such

Not compelliable to pay debts in 12 months.

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* *See ante sec. 22.*

† *After administration granted, see proviso to sec. 28.*

judgment within twelve months aforesaid,* nor shall any execution issue on any judgment obtained against said deceased, in his life-time, in less than twelve months after granting administration as aforesaid. *ib. page* 145 *ib.*

No costs de bonis propriis.

Sec. 32. And in all cases where judgments are rendered against executors or administrators, to be levied on the goods and chattels of the deceased, the judgment shall not be entered for costs against the executor or administrator of his own proper goods. *ib. ib. ib. ib.*

Manner of paying debts.

Debts preferred.

Other debts.

In case of defect of assetts to be paid pro rata.

Executors or administrators to apply for adjustment.

Sec. 33. All debts owing by any person, at the time of his or her decease, shall be paid by his or her executors or administrators, reserving first, to the widows in all cases under this act her right of dower,† as far as they have assets, in the manner following, to wit: First, funeral expences, servants wages, physic and medical attendance during the last sickness of the deceased; and judgments that were obtained against the deceased in his life-time, and rendered not more than one year before the death of the deceased,‡ unless where executions have regularly been taken out and continued to the time of the death of the deceased. And all other debts shall be paid without regarding the quality of the same, except debts due to the territory, which shall be paid last. But if there shall not be assets enough to discharge the funeral expences, physician's bills, servants' wages and judgments as aforesaid, then the assets shall be averaged and paid pro rato, except funeral expences, which shall be paid in toto. But if there be any remaining assets after the payment of the debts as aforesaid and not enough to pay all other debts of the deceased, then the said debts shall be paid pro rata, or an equal sum in the dollar, as far as the assets will extend, without regarding the quality; for which purpose the executor or administrator shall or may apply to the circuit court of the proper county, which said court is hereby authorised and empowered, *to appoint three judicious and competent persons as auditors*, to settle and adjust the proportions and rates of the remaining assets due and payable to the respective creditors; *whose report thereon, if approved by the court, shall be confirmed, and the executors and administrators shall pay the debts accordingly.** *Provided however,* That no creditor who shall neglect to exhibit his account or demand, to the executors or administrators, within one year, after public notice given in one or more of the public newspapers published in this territory, or if none published in this territory, then in some newspaper printed in some of the neighbouring states or territories, for at least three weeks, shall be entitled to receive any dividend of such remaining assets. *ib. pages* 113—114 *ib.*

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* *After taking out letters Testamentary and of Administration*

† *See Descent and Distribution, sec.* 1 *to* 5.

‡ *Execution may issue against real estate. See Judicial Proceedings, sec* 61.

Claims against estate to be exhibited within one year.
Notice be published.

Sec. 34. It shall be the duty of the executors or administrators, when they represent an estate to the said court, as insolvent, for adjustment of the rates and proportions of the respective creditors, to give notice at least two months before the time of applying to the court, in some newspaper printed in this territory, and if none is printed in this territory, then in some newspaper printed in some neighbouring state or territory and to be continued three weeks in the same, and also to put up, at two of the most public places in the county, notices notifying such creditors that application will be made to the court aforesaid, at the next succeeding term to be holden for the county of , on the day of in the year *for the appointment of auditors** to settle and adjust the remaining assets of the deceased among the respective creditors; and if any creditor shall fail to attend, by himself or attorney, at such time and place, as such *auditors or a majority of them,* [court] may appoint, having given one month's notice in some newspaper printed in this territory, or by at least three advertisements set up at the most public places in the county; to prove his demand against the estate of the deceased, by legal proof, such as would be required on a trial at law, such creditor shall not be entitled to any dividend. *ib. p.* 114—115 *ib.*

Executors and administrators to give notice of application for adjustment and apportionment of assetts.

Creditors failing to appear and prove his demand, to lose his dividend.

Sec. 35. It shall be the duty of the *auditors* [court,]* on examining demands against any estate presented to them for adjustment and apportionment, to allow none to have a dividend that are not proved to them as if the same were before them on a trial at law;

Demands how to be proven.

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* *See post section 37, by which (it is presumed,) the words in Italic are repealed.*

In cases above $20 parties may have jury trial.
Court may grant a continuance.
Witnesses to be summoned.
Costs.

and in all sums above twenty dollars, either the executors, administrators or the creditors shall be entitled to a trial by jury, if demanded, *upon the return of the report of the auditors to the circuit court,** which jury shall be immediately summoned by the sheriff, if the court shall direct: and such trial shall be in a summary mode without the form of pleadings. And if either party, after an entry of record of the court, of the fact asserted by one party and denied by the other, shall wish for a continuance, it shall be lawful for the said court, on satisfactory cause being shewn, to continue said cause till another term, as in other cases; and the parties shall respectively have compulsory process, to compel the attendance of witnesses, which witnesses shall be entitled to the same fees as in other cases; and the parties respectively, against whom any judgment is rendered, by the said court on trial as aforesaid shall pay the costs of said trial. *ib. page* 115 *ib.*

Suggestion of waste (by a creditor.)
How tried.
waste not found.
Compelled to pay costs.
Waste found. Proceedings.

Sec. 36. And when any executor or administrator shall present his administration of any estate of any deceased person, to the said court, as insolvent, and for adjustment and apportionment of the remaining assetts among the respective creditors, if any creditor will suggest, that such executor or administrator has not made a just and true account of the remaining assetts in his hands, and shall moreover require that there be an enquiry into the same, it shall be the duty of said court to direct an issue of fact, waste or non waste to be immediately made, and to be tried as is directed by this section, with regard to demands against the estate of any deceased person;† and if it shall be found that a true and just account of the remaining assetts has been rendered to the said court, then the party making such suggestion shall pay costs. But if it be found that a true and just account has not been rendered to the said court, then judgment shall be rendered in the name of the party making such suggestion against such executor or administrator of his own proper goods, chattels, lands and tenements, with costs of suit, for the amount found to be wasted; and execution shall go against such executor or administrator, and the money, when collected, shall be apportioned among the respective creditors. *ib. page* 115—116 *ib.*

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* *See note to p.* 53 *ante.*

† *Ante sec.* 53.

Precedent provisions repealed.

Apportionment how made.

Sec. 37. So much of the act to which this act is a supplement, as authorises the executors and administrators to apply to the court for auditors, where the estate is insolvent, is hereby repealed.* And the said court shall, after the estate is adjusted by the court, and the court has determined on the validity of demands against such estate, and it shall be found that such estate is insolvent, then the court shall refer the demands, credits and assetts remaining, to the clerk, or to some other competent person, to adjust the proportions of the repective creditors, and such clerk or other person, shall, as soon as may be, report thereon, and the court shall see that said report be correct, and shall decree that the executors or administrators pay accordingly, and if such executors or administrators shall refuse to pay the respective creditors according to such decree, the court shall on motion of the party give judgment against such executor or administrator, *Provided*, Ten days previous notice thereof be given, in a summary way, on which execution may issue against such executor or administrator, to be levied on their own proper goods and chattels, lands and tenements. *ib. Dec. sess.* 1815. *p.* 45, *passed* 20*th Jan. in force* 1*st July* 1816.

Dividend how compelled to be paid.

After ten days notice execution, de bonis propriis.

Appeal.

Sec. 38. And if any executor or administrator, creditor or creditors shall feel aggrieved, either by such liquidation as aforesaid, or by having been refused to come in as a pro rata creditor, or on the rendition of the judgment on the *scire facias* [notice,]† then it shall and may be lawful for such party to appeal from the sentence, judgment or decree of said court; and which appeal, when entered, shall be a supersedeas to all further proceedings till the same be determined: *Provided*, That if it is the creditor who appeals, he shall file security for the costs then due, and for all that shall accrue, on presenting said appeal to the other party. And if it is the executor or administrator that appeals, he shall enter into bond with sufficient security, in double the sum in dispute, conditioned to abide the sentence of the superior court, and pay all costs that shall be adjudged against him if he fails fo prosecute his appeal to effect. And such security being given, it shall be the duty of the clerk to make out a transcript

To be supersedeas

If by creditor, security for costs to be filed.

If executor or administrator appeals, bond to be given.

Transcript of proceedings

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* *See ante Sections* 33, 34 & 35.

† *The scire facias was directed to issue for the recovery of apportionments, by L. M. T. Dec. sess.* 1814 *p.* 116. *The method of recovery is now changed by sec.* 37 *of this head, which see.*

to be sent to clerk of superior court.

When.

Clerk of superior court to docket the cause for trial.

Superior court to proceed de novo and pass final judgment.

Proceedings to be transmitted to cl'k. of court below.

Execution to issue.

of said adjustment and liquidation, and of such judgment, if any has been given, and of all the proceedings in said cause, and transmit the same to the clerk of the superior court, on or before the first day of the next succeeding term of the superior court, to be holden for the proper county, and it shall be the duty of the clerk of the superior court to receive and file the same and place it on the docket, for trial, as other cases; and when the suit is called, it shall be the duty of the superior court to proceed in said case on the merits, as though no trial had ever taken place in said cause; and to give such judgment or decree as the court below ought to have done, which decree and judgment, when so given, shall be final. And it shall be the duty of the clerk of the superior court to make out a full transcript of the proceedings had in the superior court, with costs, and transmit the same to the clerk of the said court from whence the appeal was taken, who shall receive and file the same, and issue execution thereon accordingly. *ib. Dec. Sess.* 1814 *p.* 117—18 *passed* 20 *Jan.* 1815.

Cr's. may bring action of waste after final adjustment.

Sec. 39. If, after the final adjustment of any estate, which is represented insolvent, any creditor or other person interested, shall wish to bring his action of waste or devastavit, such creditor shall be at liberty so to do, and if he can shew waste of goods or the mismanagement of the goods or estate of the deceased, at any time by the executor or administrator, such creditor shall have judgment for so much as he shall prove to have been wasted, and the settlement made with the court shall only be conclusive so far as the executor or administrator shall have applied the assetts in pursuance of the apportionment made by the court for paying the creditors pro rata. *ib. p.* 118 *ib.*

Liability of Executors or administrators for waste.

Proviso.

Sec. 40. And when any action shall be brought against any executor or administrator, suggesting devastavit, or waste of the estate of any testator or intestate, if such executor or administrator cannot shew that he has fully administered according to law, he shall not be charged of his own estate further than the real amount of the estate of the testator or intestate; at the time of his or her death: And if, on trial, the plaintiff can shew waste or mismanagement of the estate, to the amount of his own demand, he shall recover of the proper estate of the executor or admisistrator his debt with interest and costs: *Provided*, That if the estate of the deceased were insufficient, at the time of his death, to pay all the debts of the said deceased, then such plaintiff in the action of waste, shall recover, of the proper estate of the executor or administrator, such rate or proportion of the whole assetts, as he would have drawn or was entitled to out of the estate of the deceased, under the law in cases where the estate is unable to pay the whole debts. *ib. p.* 141 *ib.*

Bonds how sued on.

Sec. 41. The bond to be given by the administrator in pursuance of this act, * may be put in suit and prosecuted from time to time, at the suit of the party injured, in the name of the governor of the territory, to the use of the party injured, for a breach of said bond or bonds, until the whole damage thereon be recovered. *ib. p.* 112—113 *ib.*

Clk. to give copies of bonds.

Sec. 42. The clerk of the circuit court shall give to any person who may request the same, upon payment of the legal fees, a true copy of any bond given by executors or administrators in pursuance of this act; and such copy certified by said clerk, with the seal of the court annexed, shall be sufficient evidence in any court, on any trial that shall be had for the breach of the condition thereof. *ib. p.* 150 *ib.*

Liability of the security.

Sec. 43. No security for any executor or administrator shall be charged beyond the assetts of the testator or intestate by reason of any omission or mistake in pleading, or for false pleading, of such executor or administrator. *ib. p.* 140 *ib.*

Legatee, creditor, &c may require Executor or administrator to give further security.

Sec. 44. Whenever any legatee, creditor or person interested in the real and personal estate of a person who has heretofore died or shall hereafter die, or surety in any bond given by executors or administrators shall declare on oath or affirmation, that he, she or they have sufficient cause to believe that the executors or administrators are wasting or mismanaging the estate of such deceased, or that the sureties given in any of the aforesaid bonds, are likely to become insolvent, and shall make application to the circuit court, of the county, in which letters testamentary or letters of administration have been or shall be granted, the said court are hereby empowered to examine the cause of complaint, and if it shall appear to them that the same is just, it shall and may be lawful for such court to order such executor or administrator to give such suffi-

Court to examine the causes of complaint &c.

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* *Ante sec.* 5.

cient bond with securities, notwithstanding the testator shall have directed, in and by his last will and testament, that no security shall be given by his executor or executors; or such further security, as they may think necessary, amounting to the value of the estate; which securities shall be taken and filed in the office of said court, in the name of the governor of this territory.

Bond so taken how considered.

And the said bond shall be deemed and considered in trust for the benefit of all persons interested in said estate, whether legatees, legal representatives, creditors or securities in former administration bonds.

Executor or administrator failing to give such security.

A successor to be appointed.

Former executor or administrator to deliver over goods &c. to successor.

And in case such executor or administrator shall refuse or neglect, for the space of thirty days after due notice of such order, to give the security, or further security so ordered, then the court shall vacate the letters testamentary or of administration, and grant new letters to such person or persons and upon such security, as said court shall think proper, and shall, moreover, order the former executor or administrator to deliver over and pay to the successor all and every the goods, chattels and credits, rights, titles, deeds, evidences and securities, which were the decedents, and which came to his or their hands, and remain unadministered, and to account to the said successor for all and every the goods, chattels, rights and credits, which shall have been previously administered, and pay over the balance, which shall remain due from him or them to the said successor, in such manner and at such time as the said court shall, upon examination and confirmation of such account, to be had according to the course of proceedings by this act provided for in cases of accounts of executors and administrators to be settled in said court, award and order.

Executor or administrator refusing to obey order &c

And if any such superseded executor or administrator shall neglect or refuse to comply with such award and order, the court, on motion, shall proceed against him or them by attachment for contempt, or the succeeding administrator may proceed at law against him or them, or his or their securities, if any there be, or against any other person or persons that may be possessed of any estate of such deceased person: or both the remedies may be pursued at the same time, if the case may require, until the end be fully attained.

Limitation as agt. securities.

Provided, That suits be instituted against such sureties within seven years after the vacating of such letters testamentary, or of administration. And the whole amount of money, to be recovered thereupon, shall not exceed the penalty of the said bonds respectively. *ib. p.* 137—138—139 *ib.*

Annual settlements

Sec. 45. Executors and administrators with or without a copy of the will annexed shall make settlement of their accounts with the court, so far as they have administered the estate of the deceased, at least once in every year: and it shall be the duty of the court, at the first term to be holden by them, annually, to cause every executor and administrator to make such settlement as aforesaid, until the duties of their said administration be fully completed; and for this purpose the said court shall have power to issue attachment against any executor or administrator who shall fail to make settlement annually as aforesaid, and when any executor or administrator shall be attached or cited by authority of the court for a neglect of any duty belonging to his office, such executor or administrator shall pay the costs of such attachment or citation out of his own proper goods.* *ib. p.* 146-7. *ib.*

How compelled.

Exrs & admr. to pay all costs. &c.

Charges and disbursements to be allowed.

Sec. 46. Executors and administrators shall be allowed in their accounts all reasonable charges and disbursements, which they shall lay out and expend in funeral expences of the deceased and other their administration; and may be allowed such recompence for their personal trouble, not exceeding six per centum on the whole amount of the personal estate and not exceeding one per centum on the money arising from the sale of lands and slaves. And when any executor or administrator shall claim any allowance for any actual disbursements by them made, they shall produce proof of the existence of such demand as is provided with regard to any other demand against deceased persons estate. And furthermore it shall be the duty of the court, when any executor or administrator shall present his account for final settlement, to examine into the evidence of the existence of all demands pretended to have been paid by such executor or administrator, and unless it shall appear to said court that such demands were such and the evidence such, as the person claiming or making such demand might recover on a suit at law, the said court shall not allow such executor or administrator any credit for such demands or debts so paid or presented. And the said court is hereby authorised to hear and determine on evidence relating to any demands

Recompense for personal service.

Disbursements must be proven.

Duty of court on final settlement.

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* *For further power of court in compelling settlement, see post sec.* 51 52

against any deceased person's estate, at the time the same may be presented to them for settlement, and, if necessary, to direct an issue of fact to be made, and tried in a summary way as directed in the sixth section of this act with regard to insolvent estates.* *ib. p.* 146 *ib.*

Notice to be given by ex'ors. admrs. and guardians before settlement.

Sec. 47. When any executors or administrators or guardians shall make settlement with the court of the proper county, it shall be the duty of such executors or administrators, at least two months previously to presenting such accounts and vouchers to the court for settlement, to give notice, by written advertisements, in three of the most public places in the county, to all legatees and other persons concerned, that such administrators, guardians or executors intend to make settlement, at the next circuit court, to be holden for the county, of their executorship or administration; a copy of which notice shall also be set up in the clerk's office of said court; and no account or settlement shall be made or allowed by said court unless such notice shall be given as aforesaid. And it shall be the duty of said court to make such settlement with such executors, administrators or guardians as is provided by this act. *ib.* 1814 *p.* 147—148; *ib.*

Court to settle &c.

Disposition of the money of minors.

Sec. 48. Executors, administrators or guardians† may by leave of the court retain in his, her or their possession the money of any minor or minors, paying therefor lawful interest, or shall under the direction of the circuit court, put out minor's money to interest upon such mortgaged security as said court shall allow. And, if such security so taken *bona fide* and without fraud, shall happen to prove insufficient, it shall be the loss of the minor. But if no person can be found, by the person as aforesaid, who may be willing to take the said money at interest then the said executor, administrator or guardian, shall only be responsible for the principal money, until it can be put out at interest as aforesaid, *Provided*, That the day of payment of the money so to be put out at interest at any time, shall not exceed one year from the day of the date of the obligation, or other security given for the same. *And provided also*, That at the end of each year the interest shall be reduced to, and made part of the principal by the said executor, administrator or guardian, and a new obligation be taken annually, where the money has been loaned out on security as aforesaid, on which obligation the interest shall be added to the principal, and bear an equal interest therewith. And executors, administrators or guardians shall not be liable to pay interest but for the surplusage of the decedent's estate remaining in their hands or power, and belonging to the minor when the account of their administration are or ought to be settled and adjusted before the court. *ib. p.* 150—1 *ib.*

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* *See ante Sec.* 35.

† *See Minors, Orphans & Guardians.*

Leability of exrs. admrs. or guardians for interest.

Sale or mortgage of minors lands.

Sec. 49. It shall be lawful for any guardian or tutor of any minor or minors whose ward or person committed to his care for tuition, where such minor may have lands and tenements for the purpose of education of such minors; for such guardians or tutors to apply to the court for the sale of such lands and tenements, or such part thereof as may be necessary, or to mortgage the same giving the premises for security, for any sum not less than two thirds of the real value as the said court shall think proper. And the court shall from time to time as they may think the circumstances of the minors estate shall justify, direct and order the education of such minors, and shall appropriate such sums therefor as may be necessary, out of said minors estate. And it shall be the duty of guardians when they make their annual settlements herein before required by this act;* to make a statement under oath of the application of any money that may have been directed by the court to be by them applied to the education of their wards, or person committed to their care for tuition, and if any guardian or tutor shall refuse to make such statement as aforesaid, such delinquent shall be proceeded against in the same manner as is herein before directed with respect to delinquent guardians.† *ib. p.* 153—4. *ib.*

Court to appropriate money for the education of minors.

Guardians &c. to account on oath

Power of exr. admr guardian &c to receive and give discharges for debts.

Sec. 50. If any executor, administrator or guardian or trustee shall receive and give discharges for any debts, rents duties or sums of money, belonging to any orphan or minor for whom they were or are entrusted; all such discharges or receipts shall be binding upon the orphan or minor when he or she attains the full age, and his heirs; and shall be most effectual in law to discharge the person taking the same: *Provided however*, That nothing herein contained shall discharge the executor, administrator or guardian or other per-

Proviso.

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* *See post sec.* 5.

† *Post sec.* 51.

son aforesaid from accounting to the minor or other person, where such receipt may not have been legally given or given for a fraudulent purpose. *ib. ib. p.* 154—5. *ib.*

Power of court over guardians &c.

Exr' & admr'

Proceedings against delinquents.

Sec. 51. The judges of the circuit courts in the respective counties in this territory shall have power to award process, or cause to come before them all and every such person and persons, who as guardians, trustees, tutors, executors or administrators or otherwise are or may be concerned, or entrusted or in any wise accountable for any estate real or personal belonging to any orphan or person under age, and cause them to make and exhibit within a reasonable time true and perfect inventories of the said estate, and to exercise and perform all and every authority and duty assigned to said court by law. And it shall be the duty of the court to call all manner of persons that may be entrusted in any manner with the care of any estate of any deceased person for the benefit of any person, to account at the first term in every year or oftener if the court shall think proper. And if any person entrusted as aforesaid shall neglect to account to said court as aforesaid the court shall immediately issue an attachment against such person to be executed by the sheriff of the county where such person may live, and returned by said sheriff together with the delinquent; who shall pay all costs of attachment. *ib. p.* 151—2. *ib.*

Further power of court over guardians &c.

Sec. 52. The said court shall have power in addition to the mode heretofore pointed out by this act with respect to attachments against executors, administrators, guardians, and others concerned in case of any minor or orphan's estate, have further power for any disobedience of any order, sentence or decree by them made in pursuance of this act, as for contempt, to imprison the body, or proceed by sequestration of lands and goods, as fully as any court of chancery may or can do. *ib. p.* 153. *ib.*

Guardians &c. how finally discharged.

Sec. 53. When any of the said minors attain to their full ages that is to say when they arrive at the age of twenty one years, and the person or persons so as aforesaid entrusted or concerned for them, having rendered accounts to the court according to law, and paid the minors or others entitled their full dues, then such minor or minors shall acknowledge satisfaction in the said court, but if any of them refuse so to do then the said court shall certify how such persons concerned have accounted and paid: which shall be a sufficient discharge to the said persons so far as they have accounted and paid fairly. *ib. p.* 155. *ib.*

Admr' where there is no known legal representative.

Sec. 54. If any intestate seized and possessed of any lands, tenements, or hereditaments, goods, chattels rights and credits leaving no lawful issue nor father, mother, brother or sister or legal representative and if any person shall administer on the estate of such intestate, such administrator shall be considered as trustee for the use of the territory where such person shall or may die, or where the letters of administration may be taken out of the estate real and personal of such intestate. *ib. p.* 126. *ib.*

Notice to be published.

Contents.

After 4 years to pay proceeds unto territorial treasury.

Sec. 55. And it shall be the duty of such administrator immediately on administering on any estate where it is commonly believed and reported that such intestate has died without legal heirs or representatives, cause to be published, a notice in some newspaper printed in this territory, and one or more of the neighbouring states or territories, and continued in the same for six weeks, containing the name of the intestate and as near as may be a description of the person together with a statement of the place where such intestate died, also the place of such intestates nativity if known, and also a statement of the appraised amount of such estate; the expences of which shall be paid out of such intestate's estate. And it shall be the duty of such administrator after the expiration of four years from the time of taking out letters of administration, if no heir or legal representative shall appear, to pay into the treasury of the territory under the direction of the circuit court of the county where letters of administration were granted, all the proceeds of the personal estate of such intestate, after paying all debts and legal demands against such intestate's estate, and after retaining twelve and a half per centum upon the whole amount of such personal estate for his personal trouble in administering the same together with all actual disbursements by him necessarily made in and about administering such estate. And it shall be the duty of said court, in directing the proceeds of such intestate's personal estate to be paid into the territorial treasury, to cause an entry to be made of record specifying the amount so paid into the territorial treasury; and also the name of the intestate and of the administrator so paying the same together with a copy of the notice of publication herein

Payment to be entered of record.

before directed by this act, and shall thereupon discharge such administrator of the amount so paid together with the twelve and a half per centum and other necessary disbursements herein before mentioned. *ib p.* 126-7-& 8 *ib.*

Sale of lands after 5 years.

To be on credit.

Admr' to execute a deed &c.

Compensation.

Sec. 56. It shall be the duty of such administrator at the expiration of five years, if no heir or legal representative shall appear, and there shall be real estate of which the intestate died seized or possessed of in this territory, such administrator shall apply to the circuit court of the county where such estate may be, for an order of sale of such estate whose duty it shall be upon said administrator producing his letters of administration of such intestate's estate, and a copy of said notice published as heretofore directed, with regard to the description of such intestate together with a certificate from the court from whence said letters of administration issued, under the seal of said court, if any other than the court from whence such letters of administration issued certifying it to be such estate as comes within the purview of the twenty first section of this act;* to order the sale of such real estate to be made on some day of the next succeeding term of said court, at the court house door, after the said administrator having advertised the same in some public newspaper printed in this territory, and continued in such paper at least three weeks, next preceding the day of sale. And upon the sale of such estate as aforesaid, it shall be the duty of such administrator to give a credit to the purchaser of said estate, who shall be the highest bidder, for one year, upon such purchaser giving bond with security to be approved by the executor or administrator for the payment of the purchase money. And it shall be the duty of such administrator upon the sale of such estate to execute to the purchaser thereof a deed in fee simple conveying all the right, title and interest that said intestate had in and to said estate: which deed shall be acknowledged before the circuit court of the county where the estate shall lie. And it shall be the further duty of such administrator to pay over unto the territorial treasury, all the proceeds by him made and received by the sale of such estate, in the same manner as is directed in the twenty first section of this act,† retaining for his trouble, ten per centum upon the whole proceeds of such sale together with all necessary disbursements by him actually made in and about settling such estate: *Provided,* That no executor or administrator shall either directly or indirectly become the purchaser of the whole or any part of the land sold by virtue of this section; and that when he makes the deed for said land so sold he shall make an oath that he is neither directly or indirectly interested in the purchase of said lands or tenements or any part thereof, nor has the same been purchased for his benefit or use. *ib. p.* 128-9. *ib.*

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* *Ante sec.* 51.
† *Ante sec.* 55

Exr' or adm'r not to purchase.

Oath.

Sec. 57. If no heir or legal representative of any intestate within the meaning of the twenty first section of this act,* shall appear and prove his right to such intestate's estate, after the money aforesaid is paid into the territorial treasury within ten years, such heir or legal representative shall be barred from having or receiving any part of such intestate's estate, real or personal, or the proceeds thereof: saving however the rights of infants, married women, persons of unsound mind, and persons not within the limits of the United States or her territories who shall respectively have the aforesaid ten years after their respective disabilities are removed or his her or their return to the limits of the United States or her territories to prove their respective claims aforesaid. But if any heir or legal representative shall appear within the time limited by this section, and produce legal proof of his, her or their right to claim such estate the court shall cause the money paid into the treasury as aforesaid, to be forthwith paid unto him, her or them out of the territorial treasury. *ib. p.* 129-130. *ib.*

Limitation of the claims of heirs.

Saving to infants &c

Heir appearing &c.

Sec. 58. If any person or persons shall be aggrieved with any definitive judgment or sentence of the circuit court, with respect to any matter relating to the administration of any estate, or the guardianship of any persons estate or body it shall be lawful for them or him to appeal from the same to the superior court; which appeal upon security given, as in other cases shall be granted accordingly. And such appeal shall be a supersedeas to all further proceedings in the court below till the same is determined. *ib. p.* 154. *ib.*

Appeal.

To be a supersedeas.

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* *Ante sec.* 54.

ADMINISTRATORS.

See Administration.

ALIMONY.

See Divorce.

APPRENTICES.*

Complaints by and against how determined.

Sec. 1. The [circuit] court shall at all times receive the complaints of apprentices who reside within the jurisdiction of such court against their masters or mistresses, alledging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging or want of instruction; and may hear and determine such cases in a summary way, making such orders thereon as in their judgment will relieve the party injured in future, or removing the apprentices, and binding them with other masters, or mistresses when it shall seem necessary: and also in the same manner hear and determine complaints of masters or mistresses against their apprentices for desertion without good cause; and may oblige the latter for loss occasioned thereby to make retribution by further services after the expiration of the time for which they had been bound. *L. M. T. Dec. sess.* 1814, *p.* 156—7. *pass'd* 21 *Jan.* 1815.

ARSON.

See crimes and misdemeanours, sec. 6.

ASSAULT AND BATTERY.

See crimes and misdemeanours, sec. 5.

ASSIGNMENT.

Bonds &c. made assignable.

Sec. 1. All bonds, bills and promissary notes for money or property shall be assignable, and the *assignee* may sue for them in the same manner as the original holder thereof could do. And it shall and may be lawful for the person to whom the said bonds, bills or notes are assigned made over and endorsed in his own name to commence and prosecute his action at law for the recovery of the money mentioned in such bonds, bills or notes, or so much thereof as shall appear to be due at the time of such assignment in like manner as the person to whom the same was made payable might or could have done. And it shall not be in the power of the *assignor* after assignment made as aforesaid to release any part of the debt or sum really due by the said bonds, bills or notes: *Provided,* Nothing in this section shall be so construed as to change the nature of the defence in law that any defendant may have against the *assignee* or the original *assignor*. *L. L. T. pt.* 1, *p.* 120–1, *pass'd* 4 *July,* 1807.

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* *Who to be bound apprentice, by whom, in what manner, and to whom, See title Minors, Orphans and Guardians, and title Vagrants. sec.* 2.

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ATTACHMENT.

Foreign attachment by whom granted.

Sec. 1. The judges of the respective courts of common pleas [circuit courts] within this territory shall and are hereby empowered to grant writs of foreign *attachment* against the estate real and personal of any person who is indebted to another and is not a resident or residing within this territory: which attachment so granted shall be duly served by the respective sheriffs upon the goods and chattels, lands and tenements of such person or persons against whom the same shall be awarded, in whose hands or possession the same shall be found, returnable to the next succeeding court, respectively where the party may proceed to trial, and shall have judgment granted the second term after the effects are seized. *L. L. T. pt.* 1, *p.* 172—3. *pass'd* 4 *July,* 1807.

Return.

Garnishee to appear and answer &c.

Sec. 2. The person or persons whose goods or effects are so attached shall be defendant in the attachment, and the person in whose hands or possession the same goods or effects are attached shall be called the *garnishee,* and shall be obliged to appear in court at the return of the attachment and answer what shall be objected against him and abide the judgment of the court, and shall be allowed out of the effects reasonable compensation for his attendance. *ib. p.* 173. *ib.*

Writ how to be executed.

Sec. 3. The manner of executing such writs of attachment shall be by the officers going to the house or to the person, in whose hands or possession the defendants goods or effects are supposed to be, and then and there declaring in the presence of one or more creditable persons of the neighbourhood that he attacheth the same goods or other effects; from and after which declaration the goods, money or effects so attached shall remain in the officers power, and be by him secured in order to answer and abide the judgment of the court in that case, unless the *garnishee* will give security therefor. *ib. p.* 173—4. *ib.*

After entering special bail discharges garnishee.

Sec. 4. And if the plaintiff in the attachment obtain a judgment and execution for the money and goods in the *garnishee's* possession, yet the defendant in the attachment, or his, her or their agent may at any time before the money be paid, put in special bail to the plaintiff's action upon which the attachment is grounded whereby the *garnishee* shall be immediately discharged. *ib. ib. p.* 174. *ib.*

Proceedings where garnishee pleads no effects in his hands & found against him.

Sec. 5. And if any attachment shall be made for goods or effects and the *garnishee* plead he has no goods or effects in his hands at the time of the attachment, or any time after, and the plaintiff prove the contrary, the court or in case either party require a jury, the jury in such case being satisfied that the proof is plain and full, shall find for the plaintiff, and say what goods or effects they find in the *garnishee's* hands, whereupon judgment shall be entered that appraisement be made of the said goods or effects, so found by the court or jury, as the case may be, and a precept shall be granted requiring the sheriff to get the same appraised; and if the *garnishee* will not produce them, then execution shall be forthwith awarded for the value thereof according to the appraisement to be levied on the goods, chattels, lands and tenements of the *garnishee*. *ib. p.* 174. *ib.*

Before order of sale plff' to swear to his demand.

And give bond.

Condition.

Sec. 6. *Provided always,* That no order shall be made for the sale of property seized on a *foreign attachment,* unless the plaintiff shall make affidavit that the demand stated in the declaration is just, and that the plaintiff shall enter into bond with security to be approved of by the court in double the sum claimed by him to the defendant, conditioned that if the defendant in the attachment shall within a year next following by himself or attorney come into court, and disprove or avoid the debt recovered by the plaintiff against him, or shall discharge the same with costs, that then the plaintiff shall return to the defendant the goods and effects, or value thereof, by the plaintiff attached and condemned, or so much thereof as shall be disproved or discharged. *ib. p.* 175. *ib.*

Domestic attachment by whom and how issued.

Sec. 7. If it shall appear by the oath or affirmation of any creditor or creditors or any other creditable person for him or them that his or their debtor has so absented himself or absconded from his usual place of abode or shall confine himself in his own house or conceal himself elsewhere that the ordinary process of law cannot be served on him, in either of these cases it shall and may be lawful for any creditor whose demand shall exceed the sum of fifty dollars, to apply to the clerk of the court of common pleas [circuit court] of the proper district [county] for a writ of *domestic attachment*; and it shall be the duty of such clerk before the issuing of such writ to take from the person applying a bond with sufficient security in double the sum that may be demanded by the creditor or creditors in his or their affidavits conditioned for the proving of his or their debts as well before the auditors as upon a trial at law in case the due issuing forth of such writ shall be contested. And if such debt shall not be really due, or if it is proven that the said writ did not issue according to the true intent and meaning of this act, then the clerk shall upon an order from the court in case there be occasion deliver such bond to said party who may sue thereon, and recover such damages under the penalty of the same, as, upon a trial at law, he shall make appear he has sustained by reason of any breach of the conditions thereof. *ib. p.* 175—6. *ib.*

Bond to be given.

How & when to be sued on.

Sec. 8. All writs of *domestic attachment* shall be executed in the same manner as is provided in this act respecting *foreign attachments*:* and every *garnishee* shall be obliged to appear and answer and be proceeded against as is provided for in this act respecting *foreign attachments*. *ib. p.* 176. *ib.*

How executed.

Garnishee's duty.

Sec. 9. The defendant in any writ of *domestic attachment* by himself or agent may at any time before distribution has been made by the auditors herein after named put in special bail to the action of the plaintiff, who obtained such writ of attachment, whereupon such attachment shall be dissolved and the property attached restored to the defendant. *ib. p.* 176. *ib.*

Def't entering special bail, dissolves attachment.

Sec. 10. No second or other attachmemt shall be issued against or served upon the estate or effects of the same defendant unless the first attachment be not executed or shall be dissolved by the court. *ib. p.* 177 *ib.*

Second attachment not to issue unles &c.

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* *Ante sec.* 3,

† *Ante sec.* 2, [illegible] 5, & 6.

Court to appoint auditors.

Their duties.

Compensation.

Sec. 11. As soon as the court has accepted the sheriff's return of any writs of *domestic attachment,* the court shall nominate three honest and discreet house-keepers of their district [county] to audit the accounts of all the defendant's creditors, and to adjust the demands, not only of the plaintiff in these attachments, but of all the rest of the defendant's creditors, and settle their shares or proportions of the defendant's whole estate, real and personal, and exhibit a true report of their proceedings thereon to the judges of the court next after such appointment for confirmation. And the judges are hereby empowered and required to allow reasonable compensation to the said auditors out of the goods or effects attached as aforesaid as a reward for their trouble. *ib.* 177 *ib.*

Powers of auditors.

Sec. 12. It shall be lawful for the auditors so as aforesaid to be appointed or a majority of them, to examine such persons as they shall think fit upon interrogatories or otherwise on oath or affirmation which they are hereby empowered to administer, touching the lands, tenements, goods, chattels, or effects, of the said defendants and such other things as may tend to disclose their estates or their secret grants, or alienating of their effects. And the said auditors may by warrant under their hands cause to be broke open any houses, chambers, shops, ware-houses, doors, trunks or chests of the said defendants, where their goods or effects shall be, or reputed to be, and seize the same for the use of their creditors. *ib. p.* 177—8 *ib.*

Penalty for making fraudulent claim.

Sec. 13. If any person shall fraudulently or collusively claim any debts, or claim or detain any real or personal estate of the defendant in any *domestic attachment,* every such person shall forfeit double the value thereof to and for the use of the creditors. *ib. p.* 178 *ib.*

Def't may contest claims.

Appeal.

Sec. 14. It shall be lawful for the defendant in any writ of domestic attachment named, by himself or agent to appear before the auditors and contest the validity of any claim that may be exhibited against him. And the said defendant as well as any creditor thinking himself aggrieved by the determination of the said auditors, may petition the court from which the writ issues, setting forth such facts and the determination thereon, with the complaint of the party and the prayer for a trial in court, and if either party require it the court shall cause a jury to be empannelled for the trial of these facts, and judgment being given by the court on the law and the fact, or on the verdict of the jury, shall be final on the said facts and the auditors shall proceed agreeably thereto. *ib. p.* 178 *ib.*

Disposition of dependant's effects.

Sec. 15. It shall and may be lawful to and for the said auditors or a majority of them, to make sale and assurance of all the lands and tenements, goods and chattels belonging to such defendants, or otherwise to order the same for satisfaction of their creditors rateably, according to the quantity of their respective debts, and every direction, bargain, sale or assignment, done by the said auditors, concerning the premises, pursuant to this act, shall be good and effectual in law against the said debtors, their heirs, executors and assigns. And it shall and may be lawful for a majority of the said auditors to grant and assign, or otherwise to order or dispose of, all or any of the debts, due or to be due, to or for the benefit of the said defendant, to the use of their creditors. And the same grant, assignment or disposition of the said debts so to be made shall vest the property, right and interest thereof in the person or persons, of him, her or them, to whom it shall be granted, assigned or ordered by the auditors; so that such assignees may sue for and recover the said debts in their own names and detain the same to their own use. And after such grant, assignment or disposition made of the said debts, neither the said defendants nor any other to whom such debts shall be due shall have power to recover the same nor to make any release or discharge thereof. *ib. p.* 178—9 *ib.*

Debts due to def't to be assigned.

Notice of sale &c. to be given.

Sec. 16. The persons nominated as auditors shall give public notice thirty days before the sale or disposition of such goods or effects as aforesaid by public advertisement in some newspaper printed in this territory, or if there is no newspaper printed, then by public advertisement affixed on the door of the court house of the district [county] where the said writs issued, and at the doors of the court houses of every adjoining district [county.] *ib. p.* 179—80 *ib.*

Sale of effects pledged or mortgaged.

Sec. 17. If the said defendants have heretofore granted, conveyed, or assured, or shall at any time hereafter grant, convey or assure, any lands, tenements, hereditaments, goods, chattels, or other estate unto any person or persons, upon condition or power of redemption, at a day to come, by payment of money or otherwise, it shall and may be lawful to and for the said auditors, or a majority of them, before the time of performance of such condition, to assign and appoint under their hands, such person or persons, as they shall think fit to make tender or payment of money or other performance according to the nature of such condition as fully as the said defendants ought to have done. And the said auditors shall after such tender, payment, or performance, have power to sell and dispose of such lands and other estate so assured upon condition to and for the benefit of the creditors as aforesaid. *ib. page* 180 *ib.*

Overplus of debt's estate to be returned.

Sec. 18. The overplus of the said debtors estate, if any be, after all their debts and lawful charges are deducted shall be returned to such debtors, their executors or administrators. *ib. ib. ib. ib.*

Interrogatories how filed.

Sec. 19. It shall and may be lawful to and for every plaintiff in any writ of *foreign or domestic attachment,* to be issued by virtue of this act out of any court within this territory, after judgment hath been duly obtained against the defendant or defendants therein, respectively named, to prepare and exhibit in writing all and singular such interrogatories upon which the plaintiff or plaintiffs shall be desirous to obtain and compel the answer and answers of any *garnishee,* in whose hands the said writ of attachment shall be laid and served touching the goods, chattels, monies, effects and credits of the said defendant and defendants in his or their possession, custody and charge or from him or them respectively due and owing at the time of the service of such writ or writs of attachment, or at any other time. And the said interrogatories so prepared and exhibited, the said plaintiff or plaintiffs shall file in the proper court out of which the said writ or writs of attachment respectively shall issue. And each and every such *garnishee* to whom a copy of such interrogatories shall be delivered is required and enjoined to be and appear before the judges of the same court on a day of time by them for that purpose to be named, and then and there in writing exhibit and file under his oath or affirmation (which the clerk of the proper court is hereby authorised and required to administer) full, direct, and true answers to all and singular the interrogatories by the said plaintiff or plaintiffs respectively prepared, exhibited and filed in the manner herein before directed and described. And if any *garnishee* or *garnishees* shall neglect or refuse so to do, then and in every such case it shall and may be lawful for the judges

Garnishee to appear and answer on oath.

Garnishee failing to answer.

of the proper court, and they are required to adjudge that such *garnishee* or *garnishees*, so neglecting or refusing as aforesaid, hath or have in his or their possession, custody and charge, goods, chattels, monies and effects of the said defendant or defendants in such writ of attachment respectively named, or is or are indebted unto such defendant or defendants, to an amount and value sufficient to satisfy the debt, claim or demand of the said plaintiff or plaintiffs, together with all the legal costs and charges of suit: and thereupon grant writs of execution against such *garnishee* or *garnishees* in the same manner as if a judgment had been regularly pronounced and entered in pursuance of the verdict of a jury or by virtue of the confession of the party. *ib. p.* 180-1--2 *ib.*

Clause of capias in what cases.

Sec. 20. If any plaintiff in any writ of *foreign* or *domestic attachment* to be issued within this territory in pursuance of this act, shall upon oath or affirmation declare, that he verily believes that any persons upon whom any writ of attachment shall be directed to be served as garnishee hath any goods, chattels or effects belonging to the defendant in his hands, or possession, or under his care, or is indebted to the defendant or defendants in any sum of money, although the same shall not then be due, and shall also in manner aforesaid declare, that the person upon whom such writ of attachment shall be directed to be served as *garnishee*, is not an inhabitant of the district [county] within which the same shall issue, or that he verily believes that there is just cause to fear, that such person is about to depart and remove from the same, it shall and may be lawful for the plaintiff to cause to be inserted in the body of the writ of attachment, a clause of *capias* against such person as aforesaid, upon whom the same shall be directed to be served as *garnishee*, and he shall thereupon be held to sufficient sureties to appear at court, and make answers as is by this act directed, and further render his body to the prison of the proper district, [county,] or to pay the condemnation money if judgment shall be passed against him. *ib. page* 182—3 *ib.*

Garnishee to give bail.

ATTORNIES.

Not to practice without license.

Sec. 1. No person shall be permitted to practice as an attorney or counsellor in any court of record in this territory unless he has obtained a license from one or more of the judges of the general [superior] court. Such license shall not be granted unless such person has studied law within this territory two years at least under the direction of some practising attorney or person of legal knowledge, or have been admitted before in some court of record in some of the United States or territories as a practising attorney, and producing satisfactory certificates as to his good moral character, and it appearing upon examination had before the judge that he is well qualified. *Provided*, That this shall not be required of those who have been heretofore admitted as attornies and counsellors in the general [superior] court of this territory. Every attorney or counsellor obtaining a license as aforesaid from any judge shall take an oath or affirmation before such judge that he will support the constitution of the United States, and that he will demean himself honestly in his practice and exercise his office to the best of his knowledge and ability. *Passed 3d July,* 1807.—*L. L. T. pt.* 1, *p.* 122—3.

Requisites to obtain a license &c.

Proviso.

Oath.

BANK OF MISSOURI.

Incorporation and style.

Sec. 1. From and after the first day of February, which will be in the year one thousand eight hundred and seventeen, all those persons who on the fourth day of September in the year one thousand eight hundred and sixteen, in St. Louis in the territory of Missouri, subscribed certain articles of association, and formed a company or limited partnership, under the name and style of "the president, directors and company of the Bank of Missouri," and all such persons who on the said first day of February, in the year one thousand, eight hundred and seventeen, shall hold any share or shares of the joint stock or funds in the said bank of Missouri, and their successors being stock-holders as aforesaid shall be, and they are hereby incorporated and made a body politic, by the name and style of "the president, and directors and company of the bank of

Missouri," and by that name may sue and be sued, implead and be impleaded, answer and be answered, defend and be defended in courts of record, and any other places whatsoever. And by that name may have and hold, purchase, receive, possess, enjoy and retain lands, tenements, hereditaments, goods, chattels and effects of what nature, kind or quality soever, and the same sell, grant, demise, alien, convey and dispose of, and by that name shall have during the continuance of that act succession; and may have and use a common seal, and the same may break, alter and renew at pleasure, and shall have power to ordain, establish and put in execution, such bye-laws, ordinances and regulations as shall seem necessary and convenient for the government of said corporation not being contrary to law, nor to this incorporation, and generally to do and execute all acts necessary or proper for the object of the said incorporation, subject to the rules, regulations, restrictions, limitations and provisions hereinafter described and declared. *L. M. T. Dec. sess.* 1816, *p.* 96. *pass'd* 31 *Jan.* 1817.

Powers.

Sec. 2. The capital stock of the said bank shall be and consist of two hundred and fifty thousand dollars, in shares of one hundred dollars each, exclusive of such shares as may hereafter be subscribed on the part of the territory of Missouri: *Provided always,* That on the application of the president and directors of said bank the then existing legislature may always extend and increase the amount of stock, capital estate and property which said corporation may hold. *ib. p.* 97. *ib.*

Capital stock.

Proviso.

Sec. 3. All such persons who shall after the passage of this act, and before the first day of February in the year one thousand, eight hundred and seventeen, become subscribers for one or more shares of the capital stock of the said bank, shall at the time of subscribing for one or more shares of the capital stock in the said bank shall at the time of subscribing pay to the president and directors of the said bank, the sum of five dollars, on each and every share by them subscribed which, as also the sum of five dollars which has been paid on each share now subscribed, according to the articles of association aforesaid, shall be forfeited to the use of said bank, unless twenty dollars on each share in addition thereto is paid on the said first day of February in the year one thousand eight hundred and seventeen, to the said president and directors, which said sum of twenty five dollars above specified, shall be the first in-

Payments of subscriptions.

stalment: And that the president and directors of said bank from and after the first day of February in the year one thousand eight hundred and seventeen may call for and demand from the stockholders respectively, all such sums of money by them subscribed, or which may be subscribed, and in such proportion not exceeding the sum of twenty five dollars on each share as they shall see fit. And the said stock-holders shall pay the same, under pain of forfeiting to the use of said bank all such share or shares and of all previous payments thereon, upon which the same is not paid: *Provided however,* That it shall be the duty of the said president and directors to give at least ninety days notice of such call or demand in one of the news papers printed in the territory of Missouri. *ib. p.* 97. *ib.*

Transaction of business.

Sec. 4. The said bank shall transact its business in the town of St. Louis, and the stock, property, affairs and concerns of said bank, shall be managed and conducted by nine directors, one of whom shall be president, who shall hold their offices for one year, four of the directors and the president shall form a board or quorum for transacting business; and in case of sickness or necessary absence of the president, his place may be supplied by any director, whom, he by writing under his hand may nominate for that purpose, or in case of his not making such nomination, the board may appoint a president to act during his absence. And that the president and directors who may be in office under the said articles of association on the first day of February, one thousand eight hundred and seventeen, shall continue in office under and by virtue of this act of incorporation, until others shall be duly chosen in their stead. No person shall be a director or a president of said bank, who is not a citizen of the United States and of this territory and a stock-holder, and a director ceasing to be a stock-holder, shall cease to be a director. All the directors to be elected shall be resident of the territory, every stock-holder being a citizen of the United States shall be entitled to vote at all elections to be holden by the stock-holders in pursuance of the act of incorporation, and shall have as many votes in proportion to the stock which he may hold, as follows, for one share and not exceeding four shares, one vote each; for every two shares above four and not exceeding twenty, one vote; for every four shares above twenty and not exceeding forty, one vote; for every six shares above forty and not exceeding one hundred, one vote:

Directors how elected.

but no person or persons, bodies corporate or otherwise shall be entitled to more than fifty votes: But no stock-holder shall be permitted to vote who has not held his stock two calender months prior to the day of election. All stock-holders living in the county of St. Louis shall vote in the choice of directors by ballot, in person; but every stock-holder living out of said county may vote in person, by ballot or by a written ballot by him or her subscribed, with his or her name and duly acknowledged before a judge of the court, a justice of the peace or a notary public, before whom such acknowledgement shall be made; and said ballot shall by him be sealed up and addressed to the cashier of the said bank, and transmitted before the time of election, shall be received and counted in the election. No person who is not a citizen of the United States, shall be entitled to a vote in any election of the said corporation. *ib. p.* 98. *ib.*

General meeting of stock holders for electing directors.

Sec. 5. A general meeting of the stockholders in the said bank shall be holden on the first monday of May, in the year one thousand eight hundred and seventeen. And the first monday of May, in every year thereafter, at such place in the town of St. Louis, as the president and directors shall direct and appoint, by giving eight weeks notice in one or more of the newspapers printed in this territory, for the purpose of electing directors for the ensuing year, who when elected, shall meet within twenty days succeeding their election, and shall immediatély thereafter proceed to choose a president. And the president and directors for the time being shall continue in their places, and be organized by the assembling of a quorum; and the choice of a president at all elections the person having the greatest number of votes shall be deemed to be chosen. All elections shall be held under the superintendance of the president for the time being and four stockholders, not being at the time directors, to be appointed by the directors, any three of whom shall be judges thereof. And they shall immediately thereafter notify the elected to meet within twenty days next ensuing the day, at the bank, and shall make a return of the persons elected at their first meeting. Should two or more persons have an equal number of votes, the other individuals elected directors shall determine by ballot from among said persons who shall be the director or directors. All elections shall be opened at ten o'clock in the forenoon and closed at three o'clock in the afternoon of the same day. *ib. page* 100 *ib.*

By laws.

Sec. 6. The president and directors shall have full power and authority to make, revise, alter and annul all such rules, orders, bye laws and regulations for the government of said corporation, and that of its officers servants and affairs, as they shall from time to time think expedient, and to use employ and dispose of the capital stock, funds and property of the said company for the interest and benefit of the stockholders subject only to the restrictions herein contained. But the said company shall not take for discounting any bill or note, more than at the rate of six per centum per annum on the amount due on such bill or note. *ib. page* 101. *ib.*

Rate per cent on discounts.

Notes, bills &c how issued negotiable, obligatory &c.

Sec. 7. All promissory notes, bills of exchange, drafts, checks and receipts for the payment of money made on the behalf of the said corporation, signed by the president, countersigned or attested by the cashier, shall be obligatory upon the said company, and shall possess the like qualities as to negotiability, and the holders thereof shall have the like action thereupon as if such promissory notes, bills of exchange, drafts, checks, or receipts had been made by or on behalf of a natural person. *ib. p.* 102 *ib.*

Books papers &c. subject to inspection of the directors.

Sec. 8. The books, papers, correspondence and funds of the said company, shall at all times be subject to the inspection of the directors. And no director shall be entitled to loan at any time more than three thousand dollars from said bank either in his own name or the name of any other person. *ib. p.* 102 *ib.*

Cashier and other officers

No compen'n to directors.

Report to legislature.

Sec. 9. The president and directors aforesaid, shall have power to appoint a cashier and all other officers and servants for executing the business of the said company respectively, but no compensation shall be given to a director for his services. And the said president and directors shall on the first day of each session of the legislature of this territory, lay before said legislature, an account, stating the situation of the bank and its funds, which said account, shall be sworn to by said president and directors, and by the cashier of the said bank. And if it shall appear to the said general assembly, that the regulations, restrictions or provisions of this act have not been complied with to the prejudice of any person or persons, it may be lawful for the said general assembly to repeal, amend, annul.

and make void, by an act to that effect, this act of incorporation, any law, usage or custom to the contrary notwithstanding. And if the said president and directors shall neglect or refuse to make such statement according to the provisions of this act, the then existing legislature shall have power to repeal or make void this charter, any thing in this act to the contrary notwithstanding. *ib. ib. ib.*

Transfer of stock.

Sec. 10. The shares of capital stock at any time owned by any individual stock-holder, shall be transferable only on the books at the bank, according to such rules as may, conformably to law, be established in that behalf by the president and directors: But all debts actually due and payable to the company, days of grace for payment being past, by a stock-holder requesting a transfer, must be satisfied before such transfer shall be made, unless the president and directors shall direct to the contrary. *ib. p.* 103 *ib.*

Dividend of profits.

Sec. 11. The dividend of the profits of the company or so much of said property as may be deemed expedient and proper shall be declared half yearly, in the first week of April and October in each year, the amount of said dividend shall, from time to time be determined by the president and directors, and shall, in no case exceed the amount of the nett profits actually acquired by the company, so that the capital stock of the said company shall never be impaired by dividends. *ib. ib. ib.*

Discount and loans not more than double the amount of capital.

Sec. 12. The said company shall not at any time discount or loan a greater sum than double the amount of the capital stock thereof, which shall be actually paid in. No standing or unlimited accommodation shall be granted to or by the president and directors of said company. *ib. p.* 104 *ib.*

Dividends impairing capital stock

Sec. 13. If the said president and directors shall at any time wilfully and knowingly make or declare any dividend which shall impair the said capital stock, all the directors present at the making or declaring of said dividend and consenting thereto shall be liable in their individual capacities to the company for the amount or proportion of said capital stock, so divided by the said directors, and each director who shall be present at the making or declaring such dividend, shall be deemed to have consented thereto, unless he shall immediately enter in writing his dissent on the minutes of the proceedings of the board, and within twenty days thereafter, give notice thereof in some one of the newspapers printed in this territory. *ib. ib. ib.*

Property and trade of the company.

Sec. 14. The company shall in no case be owners of any ship or vessel, directly or indirectly be concerned in trade or the importation or exportation, purchase or sale of any goods, wares or merchandise whatever, except bills of exchange, bullion, stock of the United States or of incorporated institutions, and such ships, vessels, goods, wares or merchandizes as shall be truly pledged to them, by way of security for debts due, owing or growing due to the said company, or purchased by it to secure such debts, the said company shall not purchase or hold any lands, tenements or other real estate, other than what may be necessary for the convenient transaction of its business, unless such lands, tenements and real estate shall have been *bona fide* mortgaged to the company by way of security or conveyed to it in satisfaction of debts previously contracted in the course of dealings or purchased to secure debts contracted with or due to the company, and in every instance in which the company may become the owners or claimants of lands, tenements or real estate, the president or directors are empowered to sell or dispose of the same in such manner as they shall deem beneficial for the said company. *ib. ib. ib.*

Vacancies in the direction.

Sec. 15. If any vacancy shall at any time happen among the directors, by death, resignation or otherwise, the rest of the directors for the time being shall elect a director to fill the vacancy. *ib. p.* 105 *ib.*

General meetings,

Sec. 16. Any number of stock-holders who shall be proprietors of not less than five hundred shares, may for any purpose relative to the institution, at any time apply to the president and directors to call a general meeting of the stock-holders, and if by them refused, the said number of stock-holders, proprietors of not less than five hundred shares as aforesaid, shall have power to call a general meeting of the stock-holders, giving at least sixty days notice in one or more of the public newspapers printed in this territory specifying in such notice the object or objects of such call. *ib. ib. ib.*

How called.

Amount of debts of the company.

Sec. 17. The total amount of debts which the said company shall at any time owe, whether by bond, bill, note or other contract, shall not exceed twice the amount of capital stock actually paid in: *Provided,* That nothing herein contained shall be construed to prevent the said company from receiving money on deposit, and owing therefor the just amount of the money actually deposited in said bank for safe-keeping, in addition to the other debts said corporation may owe. And in case of excess the directors under whose administration it shall happen, shall be liable for the same in their natural and private capacities, and an action or actions may in such cases be brought against them or any of them, their or any of their heirs, executors or administrators, in any court proper to try the same, by any creditor or creditors of said company; and may be prosecuted to judgment and execution, any condition, covenant or agreement to the contrary notwithstanding, but this shall not be construed to exempt said company, or the lands, tenements, goods or chattels of the same from being liable for and chargeable with the said excess, such of said directors who may have been absent when said excess was contracted or created, or who may have dissented from the resolution or act whereby the same was contracted or created, may respectively exonerate themselves from being liable, by forthwith giving notice of the fact, and of their absence or dissent, in some one of the newspapers printed in this territory, and to the stock-holders, at a general meeting which they shall have power to call for that purpose, and the company and the capital stock thereof, shall be liable for all the debts and engagements contracted. And the body corporate hereby created, and the capital stock thereof shall be liable for all the debts and engagements contracted, or which before or on the first day of February, in the year one thousand eight hundred and seventeen, shall or may be contracted by the company or copartnership heretofore created by the articles of association herein before mentioned, and which carried on the banking business, under the name and style of "The President Directors and Company of the Bank of Missouri," and the creditors of the said copartnership shall have the like remedy by action against the said body corporate as they had or have or may or can have against the said copartnership. *ib. p.* 106 *ib.*

Liability in case of excess.

Sec. 18. In case it shall happen at any time that an election of directors should not be made on any day pursuant to this act of incorporation it ought to have been made, the said company shall not for that cause be deemed to be dissolved but it shall be lawful on any

Failure of election.

other day to hold and make an election of directors, at a meeting to be called in such manner as shall be prescribed by the laws and ordinances of the said company not inconsistent or contrary to the provisions of this act. *ib. p.* 107 *ib.*

Place of transacting business.

Sec. 19. The said company shall be established and kept, and the buildings necessary for the accommodation thereof erected and the business thereof at all times hereafter transacted at such place or places in the town of St. Louis, as the president and directors of said company shall designate, and point out, which said location or locations when so made shall be unalterable. And until the buildings necessary for the accommodation of said company shall be erected and so far completed as to admit the transaction of business therein, or in case of an accident by fire or otherwise, happen to the building, that may hereafter be erected, for the use of the said company, shall be established and kept, and the business thereof conducted, at such times and places in the town of St. Louis, as the president and directors thereof shall designate and appoint.

Branches.

And whenever the inhabitants of any county now established, or which may hereafter be established by law in this territory, shall have subscribed for stock in the said bank to the amount of forty thousand dollars, and paid their proportion on that sum into the bank, a branch bank shall within six months thereafter be established in such county for the purpose of discount and deposit only, and upon the same terms and in the same manner as practised at the bank, and to commit the management of the said officers and the making of the said discounts to such persons under such agreements and subject to such regulations as they shall deem proper, not being contrary to law or the constitution of said bank. And in each office of discount and deposit, there shall be vested by the president and directors double the amount of the stock paid in by the stock-holders of the county where such bank of discount and deposit shall be established, *Provided always,* That a majority of the stock-holders of said county shall previously by writing request the establishment of such office of discount and deposit, and the same shall be had six months before the time on which it shall be requested to establish such office of discount and deposit. *ib. p.* 108 *ib.*

President and

Sec. 20. A majority of the whole number of directors shall be necessary in the choice of a president or a cashier. *ib. p.* 109 *ib.*

Cashier.

Bonds of Cashier and Clerk.

Sec. 21. Every cashier or clerk before he enters on the discharge of the duties of his office, shall give bond with two or more securities, to the satisfaction of the president and directors, such cashier in a sum not less than ten thousand dollars, and each clerk in a sum not less than six thousand dollars, conditioned for the faithful discharge of his duty, and it shall not be lawful for any person being a stock-holder in the said bank or any other bank to be elected or appointed as a cashier or clerk in said bank. *ib. ib. ib.*

Every Stock holder a member of the corporation.

Sec. 22. Every stock-holder, whether he be either by original subscription or by transfer, shall be considered as a member of this corporation, and when he ceases to be a stock-holder, he ceases to be a member. *ib. ib. ib.*

Territory may subscribe for stock and vote by agent.

Sec. 23. It shall and may be lawful for the governor of the territory for the time being, upon the joint resolution of the legislative council, and house of representatives of this territory, requesting him to that effect, at any time within ten years from and after the first day of February, in the year one thousand eight hundred and seventeen, to subscribe for and in the name of the territory of Missouri, any part or the whole of one thousand shares for the use of said territory. Any person authorised by a joint resolution of the legislative council and house of representatives, for that purpose, shall have as many votes in the election of directors and in managing the affairs of said bank as the number of shares actually subscribed for on the part of the said territory, would give to any stock-holder possessing the same, conformably to the provisions of this act of incorporation. *ib. p.* 110 *ib.*

Monies in payment therefor.

Sec. 24. The governor for the time being shall have power to draw from the territorial treasury the sums of money necessary to pay the amount of the shares subscribed for on the part of the territory of Missouri, that may hereafter be appropriated for that purpose. *ib. ib. ib.*

Loans to the territory.

Sec. 25. It shall be the duty of the said bank to loan to the territory of Missouri when required by the governor of the territory for the time being, upon the joint resolution of the legislative council and house of representatives of this territory, requesting him to that effect, without endorser, any sum of money not exceeding the amount of half the shares actually paid in on the part of the said territory for a period not exceeding one year: *Provided,* That ninety days notice of the intended application for said loan be given to the president and directors of said bank. *ib. ib. ib.*

Books of subscription.

Sec. 26. It may be lawful for the president and directors of said bank to open a book or books of subscription for unsubscribed stock in said bank, as often and at such places in the territory of Missouri as they shall deem fit, so as to give a fair opportunity to any citizen or citizens of said territory to become subscribers for stock in said bank, giving at least sixty days notice of the opening of said book or books in some newspaper printed in said territory, and if during the time for which the said book or books are opened for the last time the whole amount of stock shall not be subscribed, then the remaining part thereof not subscribed for, may be sold by the president and directors of the said bank for the time being to the best advantage for the use of said bank: *Provided,* That no sale of stock shall be made under par: *And provided,* That not more than one fourth of the capital stock in said bank shall be subscribed by, for or sold to persons residing out of this or Illinois territory. *ib. p.* 111 *ib.*

Specie payments.

Sec. 27. That from and after the passage of this act, the said Bank of Missouri hereby incorporated, shall pay specie upon all bills and notes which may have been or which may hereafter be drawn and payable by the said Bank of Missouri, or by the president and directors and cashier thereof, if thereunto required by the person or persons who may be the holder of such bill, note or notes, under the penalty of forfeiting at the rate of five per centum per month, for each and every month such specie payment may be refused, in addition to the amount of such bill, note or notes, to be recovered in a summary way, by motion before any Justice of the Peace, or court having jurisdiction thereof in the name or for the use of any person or persons who were the owners of said bill or note or notes, at the time they were presented for payment. *ib. ib. ib.*

Penalty for defaults.

Process against corporation.

Sec. 28. In all suits and actions prosecuted against the said corporation, it shall be a sufficient service of all writs, notices or judicial process, to serve the same upon the president or any of the directors for the time being. *ib. p.* 112 *ib.*

Embezzlement.

Sec. 29. If any president, director, officer or other person holding any share or capital of the said bank stock, shall commit any fraud or embezzlement, touching the money or property of the said bank, he or they shall be liable to be prosecuted in the name of the United States by indictment, and upon conviction thereof shall, besides the remedy that may be had by action in the name of the president and directors of said bank of Missouri, for the fraud and embezzlement aforesaid, forfeit to the said company all his shares and stock in said bank. *ib. ib.*

Continuance of charter till 1838.

Sec. 30. This corporation shall continue until the first day of February which will be in the year one thousand eight hundred and thirty eight, but nevertheless the proprietors of two thirds of the capital stock of the company may by their concurring votes at a general meeting, to be called for that purpose, dissolve the same at an earlier period; provided that notice of such meeting and its object shall be published in one or more newspapers printed in the territory of Missouri, for at least six months successively previous to the time of such meeting. *ib. p.* 113 *ib.*

Dissolution & settlement of accounts.

Sec. 31. On the dissolution of this corporation whenever the same shall be determined on as aforesaid, effectual measures shall be immediately taken by the president and directors then in office for closing all the concerns of the corporation, and for dividing the capital and profits which may remain, among the stockholders in proportion to their respective interests. *ib. ib. ib.*

Right of legislature to tax.

Sec. 32. Nothing in this act contained shall be construed to deprive the legislature of the power and right to impose taxes on the stock of said bank or the dividends thereof, which tax imposed by the legislature shall be appropriated for the use of a free school or schools, in such manner as a future legislature may order and direct: *Provided,* That such tax shall not be more than equal to other taxes, imposed by law on personal property. *ib. ib. ib.*

Non acceptance of charter

Sec. 33. Should the said company hereby incorporated under the style of the President and Directors of the Bank of Missouri fail, neglect or refuse to receive or act under this act of incorporation, within six months after it becomes a law, then and in that case the act of incorporation shall be forfeited and become void and of no effect, from and after the expiration of the said six months. *ib. p.* 114 *ib.*

Nature and

Sec. 34. This act shall to all intents and purpose be continuance of this act. deemed and held a public act, and be and continue in force, until the said first day of February, will be in the year one thousand eight hundred and thirty eight, and from and after the passage thereof. *ib. ib. ib.*

(Signed) EDWARD HEMPSTEAD,
Speaker of the House of Representatives.

BENJAMIN EMMONS,
BENJAMIN COOPER,
JOSEPH HUNTER,
JOSEPH BOGY,
} *Members of the Legislative council.*

I the undersigned of the legislative council, do certify that the foregoing bill passed the legislative council, by a majority of the whole of the members—Messrs. Ward, Perry and Cummins, voting against the passage thereof, (and no other,) and the same has been reported as truly enrolled.

(Signed) J. V. GARNIER, *Sec'y.*
Legislative Council. }

We the undersigned members of the joint committee of enrolments of the legislative council, and house of representatives of Missouri Territory, do certify that the bill entitled "An act to incorporate the stock-holders of the Bank of Missouri," is duly enrolled. Signed Joseph Hunter, Nath. Cook, James Mackay.

APPROVED, JANUARY 31st, 1817.
WILLIAM CLARK,
Governor of the Missouri Territory.

Office of Secretary of the territory of Missouri, St. Louis, Feb. 28, 1817. }
Truly copied from the originals on file, }
FREDERICK BATES, *Sec'y.* }

BANK OF ST. LOUIS.

Preamble WHEREAS Auguste Chouteau and others have by their petition presented to the Legislature prayed that a banking company may be incorporated under the style and name of the President, Directors and Company of the Bank of Missouri, and the general assembly being of opinion that the institution of a bank with a limited capital will be of public utility.

Commissioners appointed. *Be it therefore enacted by the General Assembly of the territory of Missouri,* That Auguste Chouteau, Samuel Hammond, John B. C. Lucas, Clement B. Penrose, Moses Austin, Bernard Pratte, Manuel Lisa, Rufus Easton, Risdon H. Price, Thomas Brady, Bertholomew Berthold, Christian Wilt and Robert Simpson be, and they are hereby appointed commissioners for the purposes herein after directed, and all such persons as hereafter shall become stockholders, their successors and assigns, shall be, and hereby are ordained, constituted and declared to be from time to time and until the first day of August, which will be in the year one thousand eight hundred and thirty eight, a body corporate and politic in fact and in name by the name of the president, directors and company of the bank of St. Louis, and by that name, they and their successors and assigns until the said first day of August in the year one thousand eight hundred and thirty eight shall and may have continual succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all courts and places whatsoever, and in all manner of actions, suits, complaints, matters and causes whatsoever; and that they and their successors and assigns may have a common seal, and may make, change and alter the same at their pleasure; and also that they and their successors and assigns by the same name of the president, directors and company of the bank of St. Louis, shall be in law capable of purchasing, holding and conveying any estate, real, personal or mixed for the use of the said corporation. *L. M. T. July sess.* 1813, *p.* 65. *pass'd* 21 *August*, 1813.

Style of the corporation.

Powers

Sec. 2. A share in said bank shall be one hundred dollars, and the number of shares shall not exceed fifteen hundred shares exclusive of any shares which may be subscribed ~~on the part~~ of the territory of Missouri. And a book or books for subscriptions shall be kept open under the direction of the said commissioners; and the first opening of the books, shall be on the same day at St. Louis, St. Charles, St. Genevieve, Mine au Burton, Cape Girardeau and New Madrid; and the said books shall be continued and kept open until the said number of shares shall be subscribed or such part thereof, not less than seven hundred and fifty shares, as they or a majority of them shall deem sufficient. And thereafter the said books shall be kept open at such time and places as the president and directors of said bank or a majority of them shall think proper.

1500 shares each share $100—

Books of subscription opened,

And

Kept open.

Capital not to exceed 450,000.

Proviso.

And the whole amount of the stock, estate and property which the said corporation shall be authorised to hold including the capital stock above mentioned, shall never exceed in value four hundred and fifty thousand dollars: *Provided always*, That the legislature of the territory of Missouri on the application of the president and directors of said bank may always extend and increase the amount of stock, capital estate and property which said corporation may hold. *ib. p. 67, ib.*

President and directors.

Annual elections 2d monday December.

Votes by proxy

Directors to elect the president.

Vacancies how supplied.

Sec. 3. The stock, property affairs and concerns of said corporation shall be managed and conducted by thirteen directors, one of whom shall be president; who shall hold their offices for one year, which directors shall be stockholders and citizens of the territory of Missouri; and nine of them at least, residing at or near the town of St. Louis, and the other four of them residing in the town of St. Genevieve or elsewhere in the territory, and shall be elected on the second monday in December in every year, at such place in the town of St. Louis, as a majority of the directors, who shall on all occassions constitute a board for doing business for the time being, shall appoint—and public notice shall be given by the said directors, in one of the newspapers printed in the territory, of such time and place, not more than sixty days, nor less than thirty days previous to the day of holding said election—and the said election shall be held and made by such of the stockholders of said bank as shall attend for the purpose either in person or by proxy, which proxies shall always be stockholders: and all elections shall be by ballot, and the thirteen persons who shall have the greatest number of votes, and residing as aforesaid shall be directors; and if it should happen at any election that two or more persons have an equal number of votes, then the said directors in office at the time of such election, or a majority of them shall proceed to ballot, and by plurality of votes determine which of the said persons, so having an equal number of votes, shall be the director or directors, so as to constitute the whole number of thirteen: and the said directors chosen at such election, as soon as may be thereafter, shall proceed in like manner to elect by ballot, one of their members as president; and if a director shall remove out of this territory, his office shall be considered as vacant—and whenever any vacancy or vacancies shall happen among the directors by death, resignation or removal, such vacancy or vacancies shall be filled for the remainder of the year in which they shall happen by such person or persons as the remainder of the directors for the time being or a majority of them shall appoint. *ib. p.* 68, *ib.*

Corporation not dissolved by failure in elections—which may be held 3 months afterwards.

Sec. 4. In case it should at any time happen that an election of directors should not be made on any day, when, pursuant to this act, it ought to have been done, the said corporation shall not, for that cause be deemed to be dissolved, but that it shall and may be lawful on any other day, within three months thereafter, to hold and make an election of directors, in such manner as is herein before directed, or in such manner as shall have been regulated by the laws and ordinances of the said corporation. And the directors then in office when the elections as aforesaid ought to have been made shall continue to be directors until the election herein contemplated shall be made, any thing in this law to the contrary notwithstanding. *ib. p.* 69, *ib.*

Bye-laws as to the management of the bank.

Sec. 5. The directors for the time being or a majority of them shall have power to make and prescribe such bye laws, rules and regulations and ordinances as to them shall appear proper, needful, necessary and convenient, touching the management and disposition of the stock, property, estate and effects of said corporation: the duties and conduct of the officers, clerks and servants employed therein, the election of directors, and all such other matters as appertain to the business of a bank and shall also have power to appoint so many officers, clerks and servants for carrying on the business of said bank and with such salaries and allowances, as to them shall seem meet—*Provided,* That such bye laws, rules, ordinances and regulations be not repugnant to the constitution and laws of the United States or of this territory. *ib. p.* 70, *ib.*

Where the bank to be kept.

Sec. 6. The said bank shall be established and kept and the buildings necessary for the accommodation thereof erected, and the business thereof at all times hereafter transacted at such place in the town of St. Louis, as the directors of said bank shall designate and point out—which said location when so made shall be unalterable; and until the buildings necessary for the accommodation of said bank shall be erected, and so far completed as to admit the transaction of business therein, the said bank shall be established and kept and the business thereof transacted at such times and places

Temporary place in St. Louis may be chosen.

in the town of St. Louis, as the directors thereof shall designate and appoint. *ib. ib. ib.*

The territory may subscribe 150 shares.

Sec. 7. The territory of Missouri shall have a right to subscribe any number of shares to said bank not exceeding in the whole the number of one hundred and fifty, at any time when it shall by law authorise any person or persons for that purpose, and the territory shall have a right to increase the number of shares and stock which the said corporation may hold to the amount of the sum to be subscribed, if the number of shares herein before limited shall be subscribed before such subscription shall take place on the part of the territory. *ib. p. 71, ib.*

Debts of the bank not to exceed double the amount of stock actually paid

Sec. 8. The total amount of debts, which the said corporation shall at any time owe, whether by bond, bill, note or other contract shall not exceed double the amount of the capital stock subscribed and actually paid into the bank and, in case of excess, the directors under whose administration it shall happen shall be liable for the same in their separate and private capacities; but this act shall not be construed to exempt the said corporation or any estate, real or personal, which they may hold as a body corporate, from being also liable for, and chargeable with such excess, but, such of the directors who have been absent when such excess, was contracted or who may have dissented from the resolution or act whereby the same was contracted shall not be so liable. *ib. p. 71. ib.*

Bank to hold only such real property as may be necessary for its accommodation.

Except &c.

Bank not to buy and sell merchandize

Sec. 9. The lands, tenements and hereditaments which it shall be lawful for said corporation to hold shall be only such as be requisite for its immediate accommodation, in relating to the convenient transacting of its business or such as shall have been *bona fide* mortgaged to it by way of security or conveyed to it in satisfaction of debts previously contracted in the course of its dealings or purchased at sales upon judgments which shall have been obtained for such debts. And further the said corporation shall not, directly or indirectly deal or trade in buying or selling any goods, wares merchandizes or commodities whatsoever. It shall nevertheless be lawful for said bank to receive and dispose of all bonds, bills, notes, checks or drafts made payable or negotiable at the bank. *ib. p. 72, ib.*

In what manner the paper of the bank

Sec. 10. Bills obligatory and of credit, under the seal of the said corporation which shall be made to any person or persons shall, be assignable by endorsement shall be negotiable.

thereupon under the hand or hands of such person or persons, his, her or their assignee or assignees, and so as absolutely to transfer and vest the property thereof in each and every assignee or assignees to bring and maintain an action thereupon in his, her or their own name or names; and bills or notes which may be issued by order of the said corporation, signed by the president and countersigned by the cashier, promising the payment of money to any person or persons, his, her or their order, or to bearer, though not under the seal of the said corporation shall be binding and obligatory upon the same in like manner and with like force and effect as upon any private person or persons if issued by him, her or them, in his, her, or their private or natural capacity or capacities, and shall be assignable and negotiable according to the law of merchants, in like manner as if they were so issued by such private person or persons, that is to say those which may be payable to any person or persons, his, her or their order shall be assignable by endorsement; and those which are payable to *bearer* shall be negotiable and assignable by delivery only. *ib. ib. ib.*

Directors may call for the payment of stock

Sec. 11. It shall and may be lawful for the directors for the time being to call for and demand from the stockholders respectively, all such sums of money by them subscribed or to be subscribed at such times and in such proportions as they shall see fit, under pain of forfeiture of their share or shares, and of all previous payments thereon to the said company, always however giving sixty days notice of such call and demand in one of the newspapers published in the territory as aforesaid. *ib. p. 73. ib.*

Charter not to be forfeited for non user till Dec 1817.

Sec. 12. This present act of incorporation shall in no wise be forfeited by any non user whatsoever at any time before the second monday in December which will be in the year, one thousand eight hundred and seventeen, and that it shall on that day, if no prior election has taken place and the stock subscribed shall amount to the sum of seventy five thousand dollars, be lawful for the stockholders above mentioned to assemble for the purpose of carrying the same into effect, any want of notice in the manner above prescribed, to the contrary, in any wise notwithstanding. And for the purpose of putting the said bank into operation it shall be the duty of the said commissioners or a majority of them, as soon as seven hundred and fifty shares shall

Operations to begin when 750 shares subscrib be subscribed for as aforesaid to give public notice thereof in some newspaper printed in this territory, and shall appoint a time, not more than sixty days nor less than forty days when the stockholders shall assemble as is provided in the third section of this act for the purpose of choosing the first directors. *ib. p. 74. ib.*

Number of votes in proportion to shares.

Sec. 13. Each stockholder at elections and on all other questions shall be entitled to the number of votes proportioned to the number of shares which he, she, or they may be possessed of at the time of such election, according to the following ratio, that is to say, one vote for every share not exceeding ten shares, one vote for every five shares over ten and up to thirty, and one vote for every ten shares over thirty. But no person, copartnership or body politic shall be entitled to more than seventeen votes. And no stockholder unless actually resident within the United States or any of the territories thereof shall vote at elections or on any other occasion either in person or by proxy. *ib. ib. ib.*

Non residents who hold stock not allowed to vote.

Dividends of profits every six months.

Sec. 14. It shall be the duty of the stockholders to make every six months dividends of so much of the profits of said bank, as to them or a mojority of them shall seem advisable; and if the said directors shall, at any time wilfully and knowingly make and declare any dividend which shall impair the said capital stock, all the directors present at the making or declaring said dividend, and consenting thereto shall be liable in their individual capacities to the company for the amount or proportion of said capital stock so divided by the said directors; and each director who shall be present at the making or declaring such dividend shall be deemed to have consented thereto, unless he shall immediately enter into writing his dissent on the minutes of the proceedings of the board. And every cashier and clerk before he enters upon the duties of his office shall give bond with two or more sureties to be approved of by the directors for the time being, or a majority of them, in a sum not less than ten thousand dollars for said cashier, and five thousand dollars for each clerk, conditioned for the faithful discharge of their several duties. *ib. p. 75. ib.*

False dividends.

Cashier and clerks to give bonds.

6 per. cent on loans.

Sec. 15. The said corporation shall not demand any greater interest on any loan or discount than at the rate of six per centum per annum in advance. *ib. p,. 76 ib.*

Transfer of stock.

Sec. 16. The stock of the said corporation shall be assignable and transferable according to such rules as shall be instituted in that behalf by the laws and ordinances of the same; and all debts actually due and payable to the bank by a stockholder requesting a transfer must be satisfied before such transfer shall be made unless the president and directors shall direct to the contrary. *ib. ib. ib.*

Offices of discount and deposit may be established.

Sec. 17. It shall and may be lawful for the directors aforesaid to establish offices wheresoever they shall think fit, in the territory of Missouri for the purpose of discount and deposit only, and upon the same terms and in the same manner as shall be practised at the bank, and to commit the management of said offices and the making of the said discounts to such persons, under such agreements, and subject to such regulations as they shall deem proper, not being contrary to law or the constitution thereof: *Provided nevertheless,* That the first office of discount and deposit shall be established at the town of St. Genevieve, and that no office of discount and deposit shall be established within less than fifty miles of the principal bank, nor within less than fifty miles of each other. *ib. ib. ib.*

The first to be at St Genevieve.

Lead peltry and furs &c. may be taken in place of endorsers.

Sec. 18. It shall and may be lawful for the said corporation to receive as security for any loan or discounts made by it, any lead or peltry or furs or other property, in lieu, and in the place of any indorser or indorsers to the bills, notes or obligations they may receive for payment of the same. *Provided nevertheless,* That the said property so received as security shall always be deposited, real property excepted, and left in the care, possession and control of the bank either at the capital bank, or at the office of discount and deposit or within one mile of the same, and at no other place or places whatsoever, which said property so deposited, it shall and may be lawful for the bank, after the time for which said property was so deposited shall have elapsed, to sell and dispose of, without delay, in any manner they shall judge proper, giving ten days public notice of the time and place of selling the same, any law usage or custom to the contrary notwithstanding: and *Provided nevertheless,* That it shall and may be lawful for said bank to establish a place of deposit at St. Genevieve, so soon as they shall deem proper, prior to the establishment of an office of discount and deposit at St. Genevieve, under the control and direction of such person or persons as the president and direc-

When the same may be sold.

Deposit at St. Genevieve.

tors shall direct and appoint, any thing in this act to the contrary notwithstanding. *ib. p. 77 ib.*

General meeting of the stockholders.

Sec. 19. The president and directors shall have power at all times to call a general meeting of the stockholders for purposes concerning the interest of the bank, giving at least sixty days notice, in one or more newspapers published in the territory of such meeting. *ib. p. 78 ib.*

Proprietors of 800 shares may call a general meeting.

Sec. 20. Any number of stock-holders who shall be proprietors of not less than eight hundred shares, may, at any time, for any purpose relative to the bank apply to the president and directors to call a general meeting of the stock-holders and if by them refused the said number of stock-holders, of not less than the number of shares aforesaid, shall have power to call a general meeting of the stock-holders, giving at least sixty days notice in one or more newspapers printed in the territory, specifying in such notice the object or objects of such call. *ib. ib. ib.*

Not more than a fourth of the capital to be sold out of this and Illinois territory.

Penalty.

Decided by the president and directors with appeal.

Non residents shall not have more than a fourth of the votes.

Excess above 3-4 of capital may be sold to non residents.

Sec. 21. Not more than one fourth part of the capital stock of said bank, shall be sold either directly or indirectly out of the territory of Missouri and Illinois; nor shall any person holding stock, assign or transfer the same either directly or indirectly, to any person or persons residing out of the two territories aforesaid: and any person or persons who shall make any purchase or sale of stock, contrary to the provisions of this section shall forfeit such share or shares to the use of the bank to be adjudged on by the president and directors. And the person or persons, finding him, her or themselves aggrieved by such judgment or forfeiture by said directors shall have the right of appeal to the superior court of the territory, nor shall any person or persons residing in either of the two territories aforesaid, hold either directly or indirectly any share or shares for the use of any person residing out of the two territories aforesaid, under penalty of the same forfeiture as is above prescribed: *Provided,* That the number of votes given at any election by any person or persons residing out of the two territories shall not exceed one fourth of the whole number of votes given at such election: *Provided also,* That in case of a greater amount than three fourths of the capital stock should be subscribed for or held by transfer or purchase within the two territories, it shall and may be lawful for any person or persons to sell such excess, with the approbation of the president and directors to any person or persons residing out of said territories. *ib. ib. ib.*

Sec. 22. Six of the directors with the president shall form a board or quorum for transacting all the business of the company, and in case of sickness or necessary absence of the president, his place may be supplied by any director whom he by writing under his hand may nominate for that purpose; and if the directors are dissatisfied with such nomination or in case of his not making such nomination, the board may appoint a president to act during his absence. *ib. p.* 79 *ib.*

The president and six directors to form a board.

How the presidents absence to be supplied.

Sec. 23. So soon as seven hundred and fifty shares shall be subscribed for, one third of the amount called in by the president and directors, and also one third of the bills and notes issued by the bank, shall be invested in a Branch Bank or office of discount and deposit at St. Genevieve, and so on shall the said amount paid into or vested in the said branch bank or office of discount or deposit at St. Genevieve increase according to the actual amount of capital paid into the bank until the capital of the said branch bank shall amount to the sum of fifty thousand dollars, and notes and bills in proportion: but the said branch bank at St. Genevieve shall never exceed in capital the sum of fifty thousand dollars and notes and bills in proportion, whatever increase of capital may hereafter be granted by the legislature, unless the said legislature in granting said increase of capital shall otherwise provide. *Provided,* That all officers that may be appointed to preside over and conduct said branch bank shall be appointed and chosen from among persons resident at St. Genevieve, being stock-holders. *ib. p.* 80 *ib.*

When a branch bank shall be established at St Genevieve,

And

On what conditions.

Sec. 24. This act be, and is hereby declared to be a public act, and that the same be, for the time herein declared limited and construed in all courts and places benignly and favorably for every beneficial purpose therein mentioned. *ib. p.* 81 *ib.*

Nature and continuance of this act.

BIGAMY.

See Crimes and Misdemeanours, sec. 26.

BILLS OF EXCHANGE.

Sec. 1. When any foreign bill of Exchange, which may be drawn for any sum of money expressing that the value has been received, shall be protested for non

Foreign bills.

Protest. Damages.

acceptance or non payment, the drawer or endorsers therefor shall pay said bill with legal interest from the time of non acceptance until paid and twenty per centum damages in addition, together with the costs and charges of protest.* *L. M. T. Dec. sess.* 1816, *p.* 115, *pass'd* 31 *Jan. in force* 1*st May*, 1817.

Drawer and endorser liable.

Sec. 2. Any person having a right to demand any sum of money on any protested foreign bill of exchange, may prosecute an action of debt for the principal, damages as aforesaid, interest and charges of protest against the drawer and indorsers jointly, or against either of them separately. *ib. p.* 116 *ib.*

Out of territory but in U. S. Protest. Damages.

Sec. 3. If any person shall draw or endorse a bill of exchange upon any person out of this territory, but within the United States, and the same be returned unpaid with a legal protest, the drawer and endorsers thereof, and all concerned shall pay the said bill with legal interest from the time of non acceptance, together with costs and charges of protest, and ten per centum damages on the amount of such bill.† *ib. ib. ib.*

Other bills.

Sec. 4. If any bill of exchange dated at any place in this territory, and drawn on any person at any other place therein expressed to be for value received, and payable on a certain day, or at a certain number of days, weeks, or months after sight, or after date, shall not on being presented to the person on whom it may be drawn be accepted in writing, or being accepted in that manner, shall not be paid before the expiration of three days after it shall become due, the person to whom it is payable, or his agent or assigns, may cause the same to be protested by a notary public, or if there be no such notary public, by a justice of the peace, or any person in presence of two or more creditable witnesses for non-acceptance, or non payment, and the drawer, or endorser, such protest being sent to him, or notice thereof in writing being given to him, or left at his usual abode, shall within twenty days after receiving such notice, pay the money mentioned therein, and the legal interest thereon, from the date of the protest, and cost of protest, and in default thereof, he shall pay in addition thereto, four per centum damages on the amount of said bill. *ib. ib. ib.*

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* *By the act of July sess. 1813, p. 60, ten per cent damages were given—the provisions of that act are deemed to be superseded by this.*

† *Eight per cent. was formerly given by the act referred to in the note to Sec. 1.*

BOATMEN.*

Contracts of boatmen.

Sec. 1. All contracts and engagements entered into by any person or persons whomsoever, for the rowing and navigating of boats or other crafts of any description on the navigable waters of the said district [Territory,] shall be fulfilled by the person so engaging according to the true intent and meaning thereof. *L. L. T. pt.* 1, *p.* 4—5. *pass'd* 1*st Oct.* 1804.

Boatman failing to do his duty, &c. how proceeded against.

Sec. 2. If any boatman shall misbehave himself during the course of a voyage, neglect or refuse to do his duty, or quit the boat, it shall be lawful for any justice of the peace of the district, on complaint of the master of the boat, if on board, or otherwise, of the person having the charge thereof, to issue his warrant directed to any constable, commanding him to take the delinquent and bring him forthwith before the said justice, who shall hear and determine the complaint in a summary manner, and shall have power and authority either to discharge the said offender, in which case he shall forfeit all wages due him, or also to commit him to jail for any term not exceeding thirty days, unless such offender shall then and there give security to be approved of by such justice in the sum of two hundred dollars, payable to the owner or owners of the boat, conditioned that he will during the remainder of the voyage do his duty according to his engagement. *ib. p.* 5. *ib.*

Liable for losses.

Sec. 3. If any part of the cargo or tackling belonging to any boat shall be lost during a voyage, through the neglect or default of the crew, then the property so lost shall be paid for, to the owner by the said crew. *ib. ib. ib.*

Remedy ag't. owner &c.

Sec. 4. Any justice of the peace of the territory, shall on complaint of any person employed in navigating a boat, complaining of cruel usage from the owner, or of not being furnished with the necessary provisions, to summon the master or conductor before him, and to hear and determine the same in a summary manner, and also to discharge the complainant, and to order the owner or conductor in that case to pay the whole or such part of the wages for the trip as the said justice may think proper, saving to the party who may think himself aggrieved his right of appeal to any court of record having cognizance of the same. *ib. p.* 6. *ib.*

Agreement

Sec. 5. Every master, commander or owner of any betwen master and boatmen may be registered in certain cases.

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* *For registered Boatmen. See post sec.* 5. *and following.*

craft bound on any voyage from any place on the navigable waters of this territory to a place more than five hundred miles distant from the place where the boat or craft is fitted out or on a voyage for a longer time than one month, may, before he proceed on such voyage, make an agreement in writing or in print with every boatmen on board such boat or craft (except such as shall be apprentice or servant to such master, commander or owner) declaring the voyage or voyages, term or terms of times for which said boatmen shall be engaged; and the aforesaid agreement shall be acknowledged by the parties and filed before the Register of Boatmen* and a copy of such engagement certified under the hand and seal of office of the register shall be received as evidence in any court of justice. *ib. pt. 2, p. 28. pass'd Oct 30th 1810.*

Agreement to be acknowledged.

Time of rendering on board to be noted on contract

Sec. 6. At the foot of every such contract or agreement there shall be a memorandum in writing of the day and hour on which such boatman who shall so engage and subscribe, shall render himself on board to begin the voyage agreed upon. And if the boatman shall neglect to render himself on board of such boat or other craft at the time mentioned in such memorandum, every such boatman shall forfeit for every hour which he shall so neglect to render himself, *one* days pay, according to the rate of wages agreed upon, to be deducted out of his wages: *Provided,* The master, commander or owner shall make or cause to be made an entry thereof with the Register of Boatmen in a book to be kept for that purpose within twenty four hours, after such boatman has so neglected to render himself on board. *ib. p. 28—9, ib.*

Failure to go on board.

Proviso.

Controversies between master & boatmen, how decided

Sec. 7. If, at any time after a contract has been entered into as aforesaid, between the trader and a boatman, any controversy should arise between them, it shall be the duty of the register aforesaid to hear and determine the said controversy in a summary way, where the sum in contest does not exceed sixty dollars; but where the sum exceeds sixty dollars, in such case, if either party require a jury the said register shall issue his order to any sheriff or constable within the district [county] in which he resides, requiring such sheriff or constable forthwith to summon a sufficient number of persons to constitute a jury, which jury when empannelled shall hear and determine the controversy and their verdict shall be made the judgment of the said Register. *ib. p.* 29, *ib.*

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* *Or a notary public, see Notaries Public, sec. 9*

Contract to be specifically enforced.

Sec. 8. If a jury empannelled as aforesaid, should be of opinion that the contract entered into between a trader and a boatman should be carried into effect agreeably to the terms of their contract, it shall be the duty of the register to issue his warrant to any sheriff or constable and cause the said boatman to be placed in the custody of the trader, to be forthwith conveyed to the boat destined to be used in the performance of the voyage. *ib. p.* 29—30, *ib.*

Arrears of wages to be paid &c.

Sec. 9. If a jury thus empannelled should be of opinion that any payments were due from the trader to the boatman, the Register in such case shall, and he is hereby required to cause immediate satisfaction to be made to the boatman; both as to the amount found to be due to such boatman, and all costs incurred in prosecuting his claim, before any warrant for apprehension of such boatman shall be made out. *ib. ib. ib.*

Remedy against master &c. for ill treatment &c.

Sec. 10. If, at any time a master of a boat shall fail to supply a boatman with necessary provisions or shall treat him with unusual severity or be guilty of any barbarous or inhuman conduct towards such boatman or shall fail to make such payments to him as by his contract he may be bound, in such cases it shall be lawful for the boatman to apply to any justice of the peace or the said register, and on hearing the complaints of the parties, the said justice or officer shall be authorized to discharge the boatman from his contract of service and to give judgment, and issue execution for any debt due to said boatman under sixty dollars, and the said master or his emyloyer shall be answerable besides for damages to the said boatman in the ordinary course of law. *ib. p.* 31—2, *ib.*

Provisions not to be sold to boatmen

Nor liquo

Exc [illegible]

Sec. 11. It shall not be lawful for any commander or owner of boats to sell or barter any flour, bisket or other provisions to any registered boatman, whilst the said boatman is in his service and performing a voyage, nor shall any charges made to the said boatman for spirituous liquors sold to said boatman during said voyage be recoverable and allowed but at a reasonable rate and for any sum not exceeding one tenth part of the wages of the respective boatmen for their said voyages. *ib. p.* 33—4, *ib.*

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Sec. 12. If at any time a registered boatman shall how proceeded against.

desert the service of a master or trader, after the voyage is commenced, it shall be lawful for any justice of the peace, on application of said master or trader to issue a warrant to apprehend said boatman and cause him to be brought before him or any other justice of the peace within the territory and if on hearing of the parties the justice shall be satisfied that the master or trader has complied with his contract with the boatman, and that said boatman has improperly left the service of said master, in such case the justice may commit the said boatman to jail there to remain not exceeding three months: *Provided*, The said boatman will not give security to be answerable for any damage which the said master or trader may have experienced by the desertion of such boatman. *ib. p. 32, ib.*

Jail allowance.

Sec. 13. When a boatman shall be committed to jail under the 9th section of this law,* it shall be the duty of the master or owner to pay weekly in advance such allowance as the court of common pleas [circuit court] of the district [county] or any two judges thereof in vacation may order for the keeping and maintaining such boatman and for default of such payment the boatmen shall be discharged from confinement. *ib. p. 34 ib.*

Secreting boatmen.

Sec. 14. If any person shall secrete any boatman who has contracted as provided for in the second section of this act† every such person shall forfeit and pay ten dollars for every day which he shall secrete such boatman, one half to the person prosecuting for the same, the other half to the use of the district [county.] *ib. p. 32 ib.*

Debts of boatmen above $5 not recoverable.

Sec. 15. And no sum exceeding five dollars shall be recoverable from any boatman by any one person for any debts contracted from the time such boatman has entered into a contract as aforesaid until the voyage for which such boatman was engaged shall be ended. *ib. ib. ib.*

Notes antedated.

Sec. 16. If any person shall take any note of hand or other security in writing from any boatman, after he has entered into a contract as aforesaid, and date or cause to be dated the same, back to a day previous to the date of the contract with intent thereby to stop the boatman from entering on his voyage, such note of hand or other security is not only hereby declared to

Void

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* *Ante Sec.* 12.
† *Ante Sec.* 5.

be null and void, but the person taking such note or other security in writing, his aiders and abetters shall upon conviction forfeit and pay a sum not exceeding one hundred dollars the whole of which to be for the use of the person prosecuting for the same. *ib. p.* 33 *ib.*

Person taking it fined.

Sec. 17. If, on the hearing of any controversy between the creditor of any boatman and the trader, the jury or the register where he is empowered to decide should be of opinion that the demand exhibited by such creditor is ante-dated or has any marks of collusion and fraud, the jury shall so determine it and the boatman shall be forthwith liberated and exempted from arrest under such demand, leaving the creditor to his remedy against the boatman, after his period of services should expire: And if the jury or register should be of opinion that the demand of the creditor is fair and *bona fide* and created prior to the contract between the trader and the boatman, in such case judgment shall be entered up against the boatman for the amount due, and execution issue as in case of judgments and executions by a justice of the peace, reserving to all persons their right of appeal to the court of common pleas [circuit court] as in ordinary cases, which appeal shall not operate to defeat or delay the execution of a verdict of a jury and the warrant of the register, where the boatman is adjudged to an immediate performance of his contract or service. *ib. p.* 30—31, *ib.*

Controversy between Cr. & Boatman how proceeded in.

Sec. 18. The register in causing any party or witnesses to come before him shall possess the same power and observe the same process and proceedings as is used by a justice of the peace in causes arising under his jurisdiction: *Provided,* That the register shall proceed to the hearing, determination and execution of his judgment in the most speedy manner that the nature of the case and justice will permit. *ib. p.* 30. *ib.*

Power of register in compelling the attendance of parties and witnesses.

Sec. 19. The provisions of this act* are limited to contracts entered into by masters or owners who are American citizens and engaged in voyages and expeditions not contrary to the laws of the United States. *ib. p.* 33. *ib.*

This act limited to Amer. Citizens &c.

Sec. 20. The register shall be entitled to the following fees; for taking the acknowledgement of the parties to a contract, one hundred cents; for drawing the contracts if required by the parties, fifty cents; for making an entry of a boatman not rendering himself

Registers fees.

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* *Ante sec. 5, and following.*

on board agreeable to contract, twenty cents for every certified copy with a seal of his office, twenty cents for every hundred words; for swearing a jury one hundred cents; for issuing a warrant or execution, fifty cents and for all other services the same fees as are allowed to justices of the peace in similar cases. The sheriff or constable shall be entitled for their services to the same fees as are allowed in similar cases for process issued from the court of common pleas [circuit court.] *ib. p.* 34, *ib.*

Shffs. fees.

BRIBERY.

See Crimes and Misdemeanours, sec. 20.

BRIDGES.

What deem'd. public bridges

Sec. 1. All the bridges that have been erected by any order of court not being private road bridges are hereby declared to be public bridges, and from time to time hereafter, the court of common pleas [circuit court] of the several counties shall have full power and authority to appoint the places of erecting public bridges, and it shall be the duty of such court to appoint one or more commissioners to contract for the building such bridges as may be deemed necessary for a time not less than two years nor more than four years—and the said commissioner or commissioners before he or they shall enter on the duties of such appointment, shall take an oath before some justice of the peace or judge of the court of common pleas [circuit court] truly and faithfully to perform the trust reposed in him. The commissioners so sworn shall advertise the time and place for letting the same, at three or more public places in the township, where such bridge is to be made, at least twenty days prior to letting the same and shall then let the same by public outcry to the lowest bidder, taking bond payable to the governor or his successors in office to be deposited in the clerk's office of the courts of common pleas [circuit courts] with at least two householders as securities, in such penalty as they shall deem proper, taking into consideration the value of the bridge, for the performance of such building and keeping in repair said bridge for the time contracted for. And the said court shall order the expence of building said bridge to be paid out of any money in the county treasury. *L. M. T. Dec. sess.* 1813, *p.* 79—80. *pass'd* 18*th Jan. in force* 1*st March,* 1814.

Commissioners to be appointed by court.

Com. to take oath.

Advertisement.

Contractor to give bond.

How paid.

Bridges between counties how built.

Sec. 2. When a bridge shall be necessary over any water course which divides one county from the other, the courts of common pleas [circuit courts] of each county shall join in appointing commissioners for the building and keeping in repair the same, and the expences thereof shall be defrayed by both counties in proportion to the amount of the general tax of each, to be ascertained by the digest of the general tax taken next before such contract. *ib, p.* 80, *ib.*

Repairs of bridges how made and enforced.

Sec. 3. When ever any public bridges shall require repairing it shall be the duty of the commissioners or one of them to give notice in writing thereof to the undertakers or one of their securities, stating the repairs necessary to be made, and requiring the same to be made within a reasonable time to be set forth in the said notice, and if the same shall not be made within such time such commissioner or commissioners shall employ some other person or persons forthwith to make such repairs and shall immediately thereafter give an execution against the said undertaker and his securities for the amount given for the repairs with costs. *ib. page* 80. *ib.*

Commissioners becoming contractor.

Sec. 4. When any commissioner appointed for letting any public bridges under and by virtue of this act shall undertake the building and repairing, and keeping in repair the same or shall become the security for any other person so undertaking, the powers of such commissioner shall thence forward cease and determine and the court of common pleas [circuit court] of the county shall appoint another in his room. *ib. ib. ib.*

BRITISH STATUTES.

See Common Law and Statutes of England.

BURGLARY.

See Crimes and Misdemeanours, sec. 7.

CAPE GIRARDEAU.

See Counties.

CENSUS.

Shffs. to take enumerations &c.

Sec. 1. It shall be the duty of the sheriffs in each county within this territory, and it is hereby made their duty to take the enumeration of all free, white, male, inhabitants in their respective counties, disignating in a seperate column the name and number of those above the age of twenty one years.—Each of the said sheriffs or their deputies before entering on their duties shall take an oath or affirmation before some justice of the peace of the county in the form following to wit; you A. B. do solemnly swear or affirm, that you will take a just and true enumeration of all free, white, male inhabitants in the county of   and make a true return thereof to the clerk of the court of common pleas, [circuit court] of said county within the time prescribed by law to the best of your abilities. *L. M. T. July sess.* 1813, *p.* 19—20, *pass'd* 12*th Aug.* 1813.

Oath.

When to be taken

Sec. 2. The first enumeration shall commence on the first monday of October next, [1813] and on the first monday of said month every second year thereafter, and shall be closed within forty days after the commencement thereof. And it shall be the duty of the sheriff taking such enumeration to make return of all free, white, male inhabitants as aforesaid, together with a certificate of the oath by him taken, to the clerk of the court of common pleas [circuit courts] of the proper county within ten days after the same shall be completted. Any sheriff failing or neglecting so to do shall forfeit and pay the sum of three hundred dollars. *ib. page* 20, *ib.*

Return.

Penalty for neglect.

Sec. 3. The sheriff shall enumerate all free, white, male inhabitants whose usual place of residence shall be in any family within his county and all who shall be found within his county without a settled place of residence, but are nevertheless inhabitants of the county at the time of taking the enumeration. And the said sheriff shall be allowed out of the county treasury the sum of two dollars for every day he may be employed in taking the enumeration aforesaid: *Provided neverthe-less,* That no sheriff shall be allowed or paid for more than forty days for taking the enumeration by this a[illegible]

Inhabitants to be enumerated

Sh'ffs compensation

Sec. 4. It is hereby made the duty of each and every [illegible] the return of the [illegible] male inhabitants [illegible] township [illegible] *L. M. T. D.* sess. 18[illegible]

Sec. 5. It shall be the duty of the said sheriff to make their returns according to the following table.

Form of return.

FREE WHITE.					Free col'd. and black people.		SLAVES.		
Males.			Females.						
Of 45 years of age and upwards.	Of 18 and under 45.	Under 18 years.	Of 14 years and upwards	Under 14 years.	Males.	Females.	Of 45 years and upwards.	Of 16 and under 45.	Of 10 and under 16.

ib. ib. ib.

Sec. 6. The clerks of the courts of common pleas [circuit courts] respectively shall file the several returns as aforesaid, and carefully preserve the same and shall transmit under their hands and seals of their counties, to the speaker of the house of representatives within ten days after the commencement of the session of the General Assembly next ensuing, a transcript of said enumeration and return within their respective counties, agreeably to the returns to them made as aforesaid, for which they shall be allowed out of the county revenue five dollars, and if any clerk of said court shall neglect or refuse to perform all or any of the duties aforesaid imposed on him by this act he shall forfeit and pay for every such offence a sum not exceeding three hundred dollars. *L. M. T. July sess.* 1815. *p.* 20—21, *pass'd* 12*th August*, 181[illegible]

Clerk to file returns and transmit copies to general assembly.

Clerks fees.

Penalty on failure to do duty.

Sec. 7. All fines and penalties imposed by this act shall be recovered with costs of suit by action of debt in any court having cognizance of the same. The [illegible] the use of the county, and the [illegible] for its use. *L. M. T.* [illegible]

Penalties how recovered [illegible]

CHANCERY PROCEEDINGS.

[illegible] hath [illegible] or. [illegible] may, on filing a bill [illegible]

[illegible]

or petition with the clerk of the general [superior] court,* stating the nature of his complaint, obtain from said clerk, a summons which shall be served and returned by the sheriff as in ordinary cases. *L. L. T. pt. 2, p. 6, pass'd 26th Oct. 1810, in force 1st Jan. 1811.*

Copy of bill to be delivered to shff.

Sec. 2. It shall be the duty of every person who obtains a summons as aforesaid, to deliver to the sheriff a copy of his bill or petition filed as aforesaid, which copy the sheriff shall deliver to the defendant or leave it at his usual place of abode, where service of the summons is made.† If there be more than one defendant the said copy shall be delivered to the first named in the summons, if he be resident within his district [county] and if not to the next named in the summons, that is resident of said district. [county]‡ *ib. p. 6, ib.*

How served.

Answer when to be filed.

Sec. 3. It shall be the duty of the defendant in suits brought by summons as aforesaid to file his answer with the clerk of said court during the first six days, of the term to which the summons is made returnable and in such case either party may set the cause for hearing at the next term; and on application to the clerk to obtain a dedimus to take depositions and direct subpœnas to summons witnesses, under the same rules and regulations as in ordinary cases. *ib. ib. ib.*

Defendant failing to file his answer.

Sec. 4. If the defendant shall fail to file his answer during the first six days of the term as aforesaid, if he resides within the territory the complainant may direct the cause to be set for hearing at the next term, proceed to take depositions, issue subpœnas for witnesses, and demand a trial of the cause, or proceed to take the bill or petition as confessed in such mode as the court may direct. *If the defendant or defendants reside out of the territory, and cannot be found to be served with a summons, the complainant shall cause public notice to be given in any newspaper printed in the territory in such manner as the court may direct, requiring the defendant or defendants to appear and file an answer by a day given him or them by the court or that the bill shall be taken as confessed and a decree be entered up accordingly.*§ *ib. p. 7. ib.*

Non resident defts. how proceeded agt.

Deft. appear in 2d term trial.

Sec. 5. If the defendant shall within one month preceding the second term as aforesaid file his answer or a demurrer to the bill or petition and give notice thereof to the complainant, his agent or counsel, he may prepare and proceed to trial at the said second term; *Provided*, That the complainant should not satisfy the court that the matter contained in the defendants, answer, would require an amended bill or that it was insufficient. *ib. p.* 7–8, *ib.*

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* *Must file security for costs in certain cases, See post sec. 17. Art. 1 & 2.*

† *Proceedings where defts reside out of the territory, See sec. 6.*

‡ *When defts are resident in different counties, See post sec. 17, Art. 10.*

§ *The clause in Italics enacted again, See post sec. 6.*

Non reside defendants how proce ed against.

Sec. 6. In all cases in chancery if the defendant or defendants resides or reside out of the territory, and cannot be found to be served with a summons and such non residence or *non est* being returned by the sheriff the complainant shall cause public notice to be given in any newspaper printed in this territory, in such manner as the court may direct, requiring the defendant or defendants to appear and file an answer by a day given to him or them by the court, or that the bill shall be taken as confessed and a decree entered up accordingly,*and if the defendant or defendants shall not appear and answer according to such notice the court shall enter a decree by confession conditionally, that if the said defendant or defendants shall not appear within five years after the entry of said decree and bring his or their bills of review, praying to have said decree reviewed, and file an answer to the original bill, said decree shall from the end of the said *five* years, stand absolute: *Provided always*, That if the complainant shall at any time within the said five years serve the said defendant within any of the United States or the territories thereof, with a supœna to hear judgment and if the said defendant shall not within one year thereafter bring his bill of review praying to have the said conditional decree reviewed and also answer the said original bill, then the said court on due proof being made of the service of such subpœna on the defendant shall make the said decree absolute. *L. M. T. Dec. sess.* 1815. *p-* 62--63, *pass'd 22nd January* 1816.

Deft. to swe r to his answ .

Sec. 7. Every defendant before he files his answer shall make oath or affirmation to the same before any judge or justice of the peace within the territory and if the defendant resides out of the territory he may swear to the same before any judge or justice of the peace of the state or territory in which he resides. *L. L. T. pt.* 2 *p.* 8 *passed 26th Octr.* 1810, *in force 1st Jan.* 1811.

Insufficient answer.

Sec. 8. If in the opinion of the court a defendant shall file an insufficient answer, he may be directed to file an amended answer *instanter*, and in case of failure, the court may proceed to hearing and decree.* *ib. p.* 8 *ib.*

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* *L. L. T. Pt.* 2, *p.* 7, *thus far accordant, Ante sec.* 4.

Amendments. Sec. 9. Amendments to bills and answers shall be permitted as in ordinary cases, provided that the party amending shall be subject to all the costs accruing in consequence thereof, and that neither party be surprised or unnecessarily delayed thereby: and every demurrer to bills, or exceptions to answers shall be disposed of with the least possible delay.* *ib, ib. ib.*

Demurrers & exceptions.

Rules. Sec. 10. *Rules for the Bar and the parties.*

Interrogatories. 1st. All interrogatories shall be answered specially unless excepted to as improper.

Exceptions 2d. All exceptions to bills and answers shall be in writing signed by the counsel.

When made and argued. 3d. Exceptions to bills shall be made within six days after the first day of the return term, and they shall be argued within four days thereafter unless good cause is shewn to the contrary.

Exceptions allowed. 4th. Where a bill is excepted to and the exceptions allowed, if for scandal or impertinence, the defendant shall immediately proceed to answer to the balance of the bill.

Exceptions to answers 5th. Exceptions to answers shall be made within four days after such answers are filed, and argued at the same term unless good cause be shewn to the contrary.

Replications. 6th. Replications to answers shall be made within four days after answer filed.

7th. All replications shall be general and the party shall have the same advantage thereof as if they were special, and no special replication shall be put in.

Compt. not to dismiss cause in certain cases. 8th. No complainant shall dismiss his cause after cross bill filed without the consent of the defendant or by leave of the court.

Demurrer. 9th. If a defendant will plead or demur, or plead and demur to any part or parts of a bill he shall do it within the same time he is required to answer and shall not be afterwards admitted.

Joinder 10th.* A joinder in demurrer shall be filed during the same term at which the demurrer is filed and the demurrers shall be argued at the next term, unless continued by the court.

Demurrer overruled 11th. After demurrer to a bill or to a part thereof for want of equity and demurrer overruled, the defen-

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* *See post Sec.* 10.

Deft. may answer over.

dant may answer the same on the payment of the costs thereof. *Provided*, He will answer within four days after such demurrer overruled, if not that part not answered shall be taken confessed.

Issue of fact.

12th. If the complainant shall think the matter of a plea good but not true he may take issue thereon and the same shall be tried by a jury.*

Issue of fact found against deft.

13th. If the defendant's plea is found against him, he may answer over to the equity of the bill on the payment of all the costs of the cause if the plea went to the whole matter of the bill on the payment of the costs as may have arisen by reason of said plea, and if he will not do so, the whole bill or such part thereof as may have been pleaded to shall be taken as confessed and a decree entered accordingly.

Testimony how taken.

14th. After a replication is filed the parties shall proceed to take testimony by ordering subpœnas or taking dedimus to take testimony as the case may require.

Scandal or impertinence.

15th. When a bill or answer is excepted to for scandal or impertinence, and the exceptions allowed of the party excepting, shall be allowed the costs thereof, and if the exceptions be overruled, the opposite party shall be allowed his costs.

Exhibits to be numbered.

16th. It shall be the duties of the parties or their solicitors to carefully number all paper and exhibits in a cause relied on, in the best possible manner to give a full and perfect view of the case. *L. M. T. Dec. sess.* 1815 *p.* 71–2–3 *passed 22d Jan.* 1816.

Auditors to be appointed in matters of account.

Sec. 11. In all matters of account arising under suits instituted within the purview of this act† or in any other suit at law, the General [Superior] Court shall be authorised to appoint Auditors and instruct them in such manner, as the court may deem most proper. *L. L. T. pt.* 2, *p.* 8—9, *passed 26th October* 1810, *in force 1st Jan.* 1811.

Appointment of Auditors. Their duties.

Sec. 12. The court shall from time to time, as may be found convenient, appoint one or more auditors of accounts, whose duty it shall be to audit all accounts referred to them by the court for auditing at such times as the court shall direct. *Provided*, That there shall be but one auditor at a time for each circuit or county in which the said court may sit unless said auditor shall be interested in the event of the suit or absent or unable to attend to the duties of his office. *L. M. T. Dec. Sess.* 1815, *p.* 68 *passed* 22*d Jan.* 1816.

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* *See also post Sec.* 24 & 25.

† *See also post Sec.* 12.

Rules for aud'rs.

Sec. 13. *Rules for the Auditors.**

Order of court

Rule 1st. They shall begin with the order of court and insert it verbatim.

Notice to parties.

2d. They shall state the notice to the parties verbatim of the time and place when and where they will begin to audit.

Adjournment.

3d. They may adjourn their sittings for good cause shewn by either of the parties which reason shall be stated in the report, and no adjournment shall be for a longer time than one month.

Party failing to appear.

4th. If either party after having notice of the time of the auditor sitting shall fail to attend, the auditor shall proceed ex-parte.

Accounts.

5th. The auditor shall state all accounts referred to him truly and strike the balance.

Disputed items.

6th. If the parties disagree as to the manner of stating any account the auditor shall state it in conformity with the views of each, if required thereto and then state it according to his own opinion bottomed on the evidence adduced in the case: where any item or charge is insisted on by one party and denied by the other or where either party shall alledge that the accounts produced by the other do not contain a just and true account of any item or items which he ought to have charged himself with, the auditor may compel the attendance of witnesses before him by subpœna, or issue dedimus to take testimony as in a suit at law.

Witnesses & depositions,

Witness failing to attend.

7th. If witnesses fail to attend before the auditor according to summons, the auditor shall return the fact to the court at the next term, whereupon such witness shall be attached and fined unless he can shew good cause to the contrary.

Auditors powers.

8th. The auditor shall have power to swear witnesses, hear testimony and give his opinion and enter the charge or item accordingly.

Exceptions to testimony.

9th. If either party excepts to the competency of a witness or to the sufficiency of testimony to support the auditor's opinion and shall request it the auditor shall state the testimony or facts in his report and return the same to court.

Person refusing to be sworn.

10th. If any person refuses to be sworn or give testimony before an auditor, he may commit him to prison till he is willing to be sworn or give testimony.

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* *For auditor's fees see post sec. 25.*

11th. A subpœna issued by the auditor may be served by the party applying therefor, and returned under oath. Subpœnas how served.

12th. Auditor's summonses shall be directed to the witnesses. To whom directed.

13th. All reports shall be made out on sheets of paper neatly stitched together. Reports

14th. In all cases of accounts current, a balance shall be struck out at the expiration of twelve months from the commencement thereof and interest charged thereon annually, but the auditor shall in all cases be careful to calculate the interest on such part of such annual balance as shall be composed of principal only. Acc'ts.current how adjusted.

15th. When payments are made such payment shall be applied first to the discharge of interest that may be due and the balance towards the extinguishment of the principal. Payments.

16th. Auditors shall take an oath before the court and before they enter on the duties of their appointments, that they will well and truly execute the duties of said appointments, according to the best of their judgments and skill and abilities. *ib.* 115, *p.* 68–69–70 *ib.* Oath of auditors.

Sec. 14. *Exceptions to the Auditor's Report.* Exceptions to auditors report to be in writing.

1st. All exceptions to the auditor's report, made before the court shall be in writing.

2d. They shall be made within five days after the report is returned. When made.

3d. They shall be argued at the same term at which they are made unless good cause be shewn to the contrary. When argued.

4th. If they are continued till another term they shall then be argued.

5th. The report shall stand good, except such parts as are excepted to, unless it shall appear on the face of the report or from the evidence in the cause that the same is erroneous. Effect of exceptions.

6th. When exceptions are allowed, the court may refer the report to the auditor again with such directions as may be nesessary. Exceptions allowed

7th. Exceptions to a report may be allowed because the auditor admitted incompetent testimony. Causes of exceptions.

8th. They may be allowed because the auditor excluded competent testimony.

9th. They may be allowed because the auditor admitted insufficient testimony or refused sufficient testimony, in which two last cases the court may determine the weight of such testimony, and its sufficiency or insufficiency by directing an issue or issues and empannelling a jury to try said issues of fact.

10th. They may be allowed for any other cause adjudged good by the court which shall appear on the face of the report. *ib. p.* 70—71 *ib.*

Clerks' duty.

Sec. 15. *Duties of the Clerk.*

Enter decrees.

1st. The clerk shall enter all decrees and orders of court in due time, all interlocutory decrees, decrees nisi and final decrees shall first be drawn up by the clerk and submitted to the court for their inspection and may be excepted to by the parties and altered by the court.

Keep a docket &c.

2nd. The clerks shall keep a regular chancery docket and enter all decrees and other proceedings in a cause in a separate book kept for that purpose.

Causes to be set according to priority.

3d. The clerk shall set all causes according to their priority of time and they shall be called and disposed of in their order. *ib. p.* 73—74 *ib.*

Rules for the court.

Sec. 16. *Rules for the court.*

Deft. failing to file answer.

1st. If the defendant shall fail to file his answer as prescribed by law, the court shall proceed to take the bill for confessed and enter an interlocutory decree, which shall be made absolute at the next term and carried into effect the same way a final decree is. But if the defendant will appear at the next term, and file his answer to the bill the court shall permit him so to do, on his shewing good cause why he did not appear and file his answer at the preceding term, and also on his payment of the costs of the decree nisi, and if the defendant is admitted to answer, the cause shall then proceed as other causes.

Deft. not to plead after interlocutory decree.

2d. The defendant shall not, after an interlocutory decree be admitted to plead to the bill, but shall answer or demur to the equity of the bill.

Cause when to be heard.

3d. After a cause is set for hearing it shall not be heard till the next term and then it shall be heard or as soon after as possible.

Testimony.

4th. The rule and mode of taking testimony in chancery, shall be the same as at law.*

Exceptions to decrees.

6th. After a decree is made, the party shall have till the third day of next term, to shew why it shall not stand, at which time if no cause be shewn, it shall be considered as final and ready for execution, but if the defendant will shew cause on or before the said third day of the said term, he shall at least one month before the said term, leave a copy of his objections, with the opposite party or his solicitor, and if the exceptions are allowed, the court shall correct the error and enter the decree or otherwise dispose of the cause at the same term.

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* See *Judicial Proceedings, sec.* 32, *and Depositions, sec.* 1. *See also Injunctions ses.* 6.

Subpœnas for witnesses.

6th. In chancery, process of subpœna for witnesses may be directed to the witnesses and served by the parties and returned under oath, or it may be served by the sheriff as other process is served.

Hearing of causes when, &c.

7th. All chancery causes shall be heard as soon as the issues of facts are disposed of, if any there be and if there be none then as soon as possible to do complete justice.

Effect of decrees.

8th. A final decree in chancery shall be a lien on lands as judgments at law in the superior court of this territory.*

9th. A final decree and a decree taken on the confession of the party, and a decree where the bill is taken as confessed may be pleaded to an action at law and shall have the same effect as a judgment at law.†

On real property.

Personal property.

10th. Final decrees shall bind real property as a judgment in the superior court does:‡ *Provided*, The provisions contained in this rule shall not be construed so as to give a person having a decree in his favor a preference over judgment creditors at law, and that an execution or a decree shall bind personal property from the time of its delivery to the sheriff. *ib. p. 75 ib.*

Non-resident plaintiffs to give security for costs.

Sec. 17. If the complainant lives out of this territory, he shall, before the issuing of process to appear, cause a bond to be executed by at least one sufficient person being a free-holder, and resident in the territory, to the defendant, in a sum sufficient to cover all costs, conditioned to prosecute the suit with effect, and to pay all costs if the defendant should be entitled thereto, which bond shall be filed in the office, and if no such bond be filed, the bill shall be dismissed.

Security for costs required of residents in certain cases.

2d. The Complainant, if a resident in the territory, may be compelled to give security as plaintiffs at law are,§ and poor persons may be admitted to sue in chancery in the same manner poor persons are admitted to sue at law.¶

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* *See Judicial Proceedings, sec. 59 and following.*

† *For the effect of a Judgment at Law, See Judicial Proceedings, sec. 59.*

‡ *How far a Judgment in the Superor court binds real property see Judicial Proceedings, sec. 59 and following.*

§ *In what cases and how resident plaintiffs are compelled to file security for costs, see Judicial Proceedings sec. 7.*

¶ *How poor persons may sue at law, See Judicial Proceedings sec. 8.*

Injunction & ne exeat.

3d. The Court shall always be considered open to grant writs of injunction and writs of ne exeat.

5th. Parties applying for writs of injunction and ne exeat shall swear to their bill.

Issues of fact how disposed of.

5th. If any matter of fact affirmed by one party and denied by the other shall arise in the course of the hearing of a cause, the court may cause a jury to be summoned and try the fact instanter, unless it shall appear to the court that injustice could be done, and in that case the court may adjourn the hearing till next term, and till the issues of fact be determined or may proceed to hear the cause as far as they can and then adjourn the hearing till the issue be tried.*

Chancery proceedings matters of record.

6th. The records and proceedings of the court of chancery proceedings, are hereby declared matter of record and shall have the same effect.

Opinion of court to be recorded in decrees concerning real property.

7th. In order to procure uniform and permanent rules of decisions in the said court in chancery cases, respecting real property, in all cases where the title of land shall come in question, it shall be the duty of the court before a decree shall be pronounced, to give in open court, the reasons for such decree, and it shall be further the duty of the court pronouncing a decree as aforesaid, to cause the clerk to enter in a book in which the opinions of the superior court is now required to be entered, in matters of law, the reasons of the court for said decree, and after being entered as aforesaid the court shall inspect the same, and if correct, shall sign the same, and if not correct shall correct and sign the same, but if any judge dissents from the decree, he shall also in the same manner enter the reason for his dissent.

Suits by assignees of bonds.

8th. Suits in chancery may hereafter be brought in the names of assignees of bonds with collateral conditions.

New trials.

9th. That not more than two new trials shall be granted to any one party on the trial of an issue of fact in chancery.

Several def'ts. residing in different counties.

10th. If in any case there are several defendants named in a bill, some of whom live in different counties from each other, subpœnas to appear, shall go into different counties at the same time, there to be executed by sheriffs thereof and returned according to law.

Several de-

11th. If there be several defendants named in a bill, some of whom appear and defend and others are not found the court may award alias summonses at the request of the parties, and stay proceedings till the other defendants can be found, or the court may proceed against those who do appear to a full hearing, and may proceed against defendants in all cases where there are several defendants who have been summoned and they or some of them do not appear and defend, and decree severally against such defendants, or jointly if no injury would be done thereby, and in case some of the defendants should live out of the territory and some in the territory, the court may proceed against those who live out of the territory in the same manner as is provided against such persons in the first section of this act* and decree severally against the said defendants as aforesaid.

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* *See post sec.* 18.

fendants some of whom do n not appear, not found or are non resident

12th. Joint judgments entered in said court in chancery causes where one or more of the judgment debtors may die before judgments are carried into effect, shall survive against the executors, administrators or heirs of the deceased person and may be revived against them by scire facias, and if such judgment creditors or any of them shall die, said judgment shall survive to their executors, administrators and heirs.

Joint judg'ts. survive ag't. representatives of dec'd

13th. The court shall have authority from time to time to make such rules not provided for by law, that may be necessary to carry their powers into effect, as they may think necessary, so that such rules be as near as possible conformable to the rules of proceedings of the high court of chancery in the United States, and when such rules are declared, they shall be binding on all parties till declared null, and no rule shall be declared null on the decision of a point, and when new rules are proposed by the court, they shall be submitted to the bar for objections and shall be determined on by the court and declared rules of court. *ib. p. 75 ib.*

Rules by whom and in what manner to be established.

Sec. 18. If in the progress of a suit thus instituted,† either party should require a jury for the determination of any facts arising in the suit the court shall cause an issue to be made up and direct a jury to be empanelled without delay.‡ *L. L. T. pt.* 2 *p.* 9, *passed 29th October* 1810, *in force* 1*st Jan.* 1811.

Issues of fact.

Sec. 19. The General [Superior] court shall have power to establish from time to time such rules of practice as may be necessary to carry into effect the provisions of this law and bring suits instituted under this law speedily to a final determination. *ib. p.* 12 *ib.*

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* *Ante sec.* 6.

† *Ante sec.* 1.

‡ *Also ante sec.* 17 *art.* 5.

Costs of publication.

Sec. 20. The costs attending the publication of any notice in a newspaper under this law, to be taxed like other costs. *ib. ib. ib.*

Effect of decree and how executed.

Sec. 21. A decree given by the general [superior] court in pursuance of this law, shall have the same effect and be carried into execution in the same manner as a judgment given at common law.* *ib. p.* 9 *ib.*

Decree of conveyance of real or personal estate how made & carried into effect.

Sec. 22. In all cases where the court according to the usage and course of chancery may decree a conveyance of real estate or delivery of personal property, the court shall decree that the estate or personal property pass from the defendant to the complainant absolutely, and also the court in case of real estate shall issue a writ of possession if necessary to put the party in possession, and where the court shall decree that personal property shall pass, the court shall issue a writ to the sheriff to put said property in possession of the party entitled thereto, or the court shall proceed by sequestration to carry any decree into effect as herein after specified and in all cases where the court shall decree that real estate pass the party in whose favor the decree is, shall cause a copy of said decree to be recorded in the recorder's office where the land may be, within one year after such decree or deed made, and where such deed or decree is not recorded as aforesaid within the time aforesaid they shall be deemed fraudulent against subsequent purchasers for good consideration and without notice. *L. M. T. Dec. sess* 1815 *p.* 63—4 *passed 22d Jan.* 1816.

Execution on decree.

Sec. 23. In all cases where the court shall decree relief, or that money be paid or that deeds, evidences, or securities be delivered up, the court may proceed by execution as on judgments at law to carry said decree into effect, if the execution from the nature of that writ can in such case be effectual, but if such writ of execution cannot be effectual, the said court may also at the same time, proceed by attachment, fine and imprisonment against the party disobeying such decree until said decree is complied with, and may also if necessary, proceed by sequestration against any party disobeying any decree. *ib. p.* 64. *ib.*

Attachment fine and emprisonment.

Sequestration

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* *See Judicial Proceeings sec.* 59 *& following.*

Sec. 24. Sequestration shall be executed by disposing of the real property of the delinquent as property sold by execution and returning the money into court, to be rendered to the complainant in satisfaction of his decree or for damages occassioned by the delay of the execution of said decree, as the said court shall according to equity think right, and the said court shall have power to appoint commissioners to take the delinquent's lands and tenements into possession and to receive the rents and profits and render an account thereof annually to said conrt to be applied as aforesaid; and to the end that the court may be enabled to do complete justice, the court shall have power in all cases where a decree cannot be carried into effect, by any of the means aforesaid either because of the defendant's obstinacy or because he cannot be found to be attached, or any other cause whatever, on application of the complainant or any other person entitled to the benefit of a decree, at any time after a decree absolute or conditional shall be made, to direct an enquiry by jury into the amount of damages which the complainant ought to have in lieu of the performance of such decree and the verdict of the jury shall be the measure of such damages. And the court shall enter judgment thereon and issue execution on said judgment, as in other cases: *Provided*, No execution shall issue on any conditional decree until the same shall become absolute in the manner above mentioned. *ib. p.* 64--5, *ib.*

How sequestration shall be executed.

Jury may be ordered to assess damages in certain cases.

Proviso.

Sec. 25. The sheriffs fees shall be the same as at law,* for like services and the court shall allow auditors such reasonable compensation as they may think right, to be paid by the party or out of the effects of the party against whom the decree shall be made. *ib. page* 79, *ib.*

Sheriffs fees and auditors compensation.

CHEATS.

See Crimes and Misdemeanours, sec. 16.

CIRCUITS.

Sec. 1. This territory shall be divided into two districts or circuits. *L. M. T. Dec. sess.* 1814. *p.* 47, *pass'd 4th Jan. in force* 15*th Feb.* 1815.

Two established.

Sec. 2. The circuits shall be called the northern and southern circuits and shall be formed as follows to

What called.

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* *For sheriffs fees at law, See title Fees sec.* 13.

Divisions

wit: The counties of St. Charles, St. Louis and Washington, shall compose the northern circuit,* the counties of St. Genevieve, Cape Girardeau and New Madrid shall compose and form the southern circuit. And in case any new county or counties shall hereafter be established south of the counties of St. Genevieve and Washington, they shall form part of the southern circuit.† *ib. p.* 48, *ib.*

CIRCUIT ATTORNIES.

By whom and how appointed.

Oath, duties and fees.

Sec. 1. There shall be appointed and commissioned by the governor, a suitable person learned in the law as circuit attorney, for each of the circuits established by law in this territory. And also a prosecuting attorney for the county of Arkansas, who shall severally take the like oath of office, perform the like duties, have the same powers and be entitled to the same fees in the aforesaid circuits and county of Arkansas, as are now prescribed by any act of this territory.‡ *L. M. T. Dec. sess.* 1814, *p.* 72, *pass'd Jan.* 17, 1815.

Duties.

Powers.

Sec. 2. It shall be the duty of the said attorney general§ [circuit Attornies] to prosecute in said territory all pleas civil and criminal in behalf of the United States or of said territory. And said attorney general shall have power to appoint suitable deputies in the several districts [counties] of the territory for the purposes of prosecuting aforesaid. *L. L. T. pt.* 1, *p.* 31, *pass'd 6th May,* 1806.

Oath.

Sec. 3. And the said Attorney general and his deputies shall before they respectively proceed to exercise the duties of their offices take an oath to support the constitution of the United States, and faithfully to discharge the duties of attorney general, or deputy as the case may be. *ib ib ib*

CIRCUIT COURTS.

Number of terms annual-

Sec. 1: The said circuit Judge shall hold three terms annually of the said circuit court in each and every ly in each county.

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* *The county of Howard erected and attached to the northern circuit. Dec sess.* 1815—*p.* 89.

† *The county of Lawrence has since been established and attached to the southern circuit. L. M. T. Dec. sess.* 1814. *p.* 63. *See counties.*

‡ *Oath post sec.* 3. *Duties post sec.* 2, *Fees see title Fees sec.* 3.

§ *Office of Atty. Gen. abolished. L. M. T. Dec. sess.* 1814, *p.* 72.

county within his circuit and shall have jurisdiction of all civil cases above the sum of ninety dollars and in all criminal cases except those the punishment of which is capital, and jurisdiction in all other cases now exercised by the courts of common pleas except only such cases the jurisdiction of which is by this law given to the county courts.* And appellate jurisdiction from the county courts and justices of the peace. *L. M. T. Dec. sess.* 1814, *p.* 48, *pass'd* 4*th Jan. in force* 15*th Feb.* 1815.

Jurisdiction original.

Appellate.

Contempts.

Sec. 2. The circuit and county courts by this act established shall have power to fine and imprison for contempt provided such fine does not exceed ninety dollars and such imprisonment shall not be longer than during the sitting of the court, unless any person thus imprisoned shall neglect or refuse to pay such fine, in which case the court may if they think proper order such person to remain in prison until such fine together with the costs and charges be paid. *ib. p.* 53--4, *ib.*

Terms of courts.

Sec. 3. The circuit courts in this territory shall be held at the times and places following, to wit; for the northern circuit in the county of Howard, on the second mondays, in March, July and November; in the county of St. Charles, on the fourth Mondays in February, June and November; in the county of St. Louis, on the second mondays in February, June and October; in the county of Washington, on the first mondays in February, June and October; for the southern circuit, in the county of St. Genevieve, on the first mondays in February, June and October; in the county of Cape Girardeau, on the second mondays in February, June and October; in the county of New Madrid, on the third mondays in February, June and October, and in the county of Lawrence, on the first mondays in March, July and November. *L. M. T. Dec. sess.* 1816, *pass'd 1st Feb. in force 1st July* 1817.

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* *The county courts were abolished and their duties and jurisdiction transferred to the circuit courts by an act passed 21st Jan.* 1816; *so that the circuit courts now possess all the jurisdiction formerly exercised by the late courts of common pleas. The late courts of common pleas were established by an act passed 20th August* 1813, *by virtue of which they exercised the same jurisdiction and possessed the same powers, which were possessed and exercised by the former courts of common pleas, and quarter sessions of the peace and orphans courts, and performed the duties formerly required of the judge of probate. The act establishing orphans courts and the act establishing the office of judge of probate, were repealed, and the duties formerly performed by them are now required of the circuit courts by virtue of an act passed 21st January* 1815.—*See Titles Administration—Wills and Testaments, Minors orphans &c. The old courts of common pleas in civil cases, and the courts of Quarter sessions in criminal cases, possessed the same general jurisdiction, now vested in the circuit courts by this section. The particular duties required of the several courts whose jurisdiction and powers are transferred to the circuit courts will be found under the different heads.*

How to be held in case of death or absence of a judge.

Sec. 4. And in case either of the said circuit judges shall by death or unavoidable absence be unable to attend his circuit court or any term thereof it shall be the duty of the judge of the other circuit to attend in his place; and hold such court or courts until such vacancy shall be filled by the governor where the same shall have happened by death. *L. M. T. Dec. sess.* 1814, *p.* 49, *pass'd 4th Jan. in force 15th Feb.* 1815.

Both Judges to attend in certain cases.

When a judge is interested.

Both judges interested.

Sec. 5. It shall be the duty of circuit judges appointed by virtue of this act* to go jointly into the respective circuits, in case any person appointed a judge under this law shall have been a practising attorney in any circuit to which he has been appointed a judge until the causes in which said judge shall have been concerned shall be determined. And in case any judge shall be interested in any cause in his circuit, it shall be his duty to make out a list of such case or cases and file the same in the clerk's office of the court where the cause may be pending. It shall be the duty of the clerk of the circuit court where said judge is interested, a reasonable time before the term the cause is set for trial to give to the other circuit judge notice thereof and it shall be the duty of the other circuit judge to attend at such circuit for the trial of said cause. And if both judges shall happen to be or to have been interested or concerned in any cause or causes, they shall order and direct the same to be certified to the superior court to be there decided. *ib. p.* 49--50, *ib.*

Duration of terms.

Sec. 6. The said courts shall respectively be held until all the business before them shall be disposed of *ib. p.* 49, *ib.*

CIRCUIT JUDGES.

Circuits.

Judges how appointed.

qualification.

Salary.

Oath.

Sec. 1. This territory shall be divided into two districts or circuits, for each of which there shall be appointed and commissioned by the governor, one person learned in the law, who shall have resided in the territory at least one year previous to his appointment, as circuit judge, with a salary, annually of twelve hundred dollars, to be paid quarter yearly out of the territorial treasury, who previous to entering on the duties of his office shall take an oath to support the constitution of the United States, and the oath of office, according to law. *L. M. T. Dec. sess.* 1814, *p.* 47--8, *pass'd* 4*th Jan, in force* 15*th Feb.* 1815.

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* *See circuit judges.*

Where to reside.

Sec. 2. It shall be the duty of the said circuit judges to reside in the circuit for which they shall be appointed. *ib. ib. ib.*

Not to practice law.

Sec. 3. No person appointed a circuit judge under this law* shall be at liberty to practice law. *ib. ib. ib.*

Tenure of office. How removed. Vacancy.

Sec. 4. The judges of the circuit courts shall hold their offices during the territorial government unless sooner removed for nonfeasance or misfeasance in office or neglect of duty by joint ballot of both houses of the legislature two thirds of both houses concurring, in which case it shall be the duty of the governor to remove said judge from office. And in case a vacancy shall happen in the office of judge of the circuit court, by death, resignation or otherwise, it shall be the duty of the governor of the territory to fill such vacancy as soon thereafter as may be. *ib. ib. p.* 50, *ib.*

CLERKS.

Clerks' office where to be kept.

Sec. 1. Each and every clerk of any court of record now established or that may hereafter be established in this territory shall keep his office at or within a mile of the place appointed or fixed upon permanently for holding courts in the county in which such persons may be appointed clerk. And if any clerk shall fail or neglect to keep his office at the place appointed or fixed upon as aforesaid for holding courts in the county of which he is appointed clerk, every such clerk so failing and neglecting shall forfeit and pay for each and every day he shall so fail or neglect the sum of ten dollars, to be recovered by action of debt before the circuit court, one half for the use of the county and the other half for the use of any person sueing for the same. *L. M. T. Dec. sess.* 1814, *p.* 51, *pass'd* 4*th Jan. in force* 15*th Feb.* 1815.

CLERKS OF CIRCUIT COURTS.

How appointed.

Sec. 1. The circuit judges as soon after their appointment as may be, shall respectively appoint in each county in their circuit a competent person as clerk, who

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* *Ante sec.* 1.

Office. Bond. Condition. Oath. Seal of office.

shall be commissioned by the governor and hold his office at the place where such circuit court may be held. And the said clerks previous to entering on the duties of their offices shall give bond with two sufficient securities at least, to be approved of by the judge making such appointment to the governor of the territory and his successors in office for the time being, in the sum of three thousand dollars conditioned seasonably to record all decrees, judgments and orders of the court of which he is clerk and to do and perform all other duties required of him by law,* and to deliver up the records and other writings belonging to his said office, whole safe and undefaced to his successor in office and shall moreover take an oath well and truly and faithfully to the best of his abilities and judgment to discharge the duties of his office, which oath shall be endorsed on the back of the bond and be filed in the office of the secretary of the territory. And it shall be the duty of each clerk appointed by virtue of this section to procure a seal purporting to be the seal of the circuit court of which he is clerk. *L. M. T. Dec. sess.* 1814, *p.* 50-51 *pass'd* 4*th Jan. in force* 15*th Feb.* 1815.

To be recorders.

Sec. 2. The clerks of the several county [circuit] courts shall be ex-officio recorders of the said several counties, and shall do and perform all the duties appertaining to the recorders office and shall also do and perform all the duties required by law of the several clerks of the courts of common pleas† in this territory as far as the same relates to the jurisdiction of the county court thus established.‡ *ib. p.* 47, *ib.*

Clk. of com. pleas (now C. court) to be recorders. Duties.

Sec. 3. The clerks of the several courts of common pleas [circuit courts] shall be ex-officio recorders of the several counties, and shall do and perform all the duties appertaining to the recorders office; and also shall do and perform all duties required by law of the clerks of common pleas, quarter sessions of the peace and orphans court of the several districts [counties] heretofore established within this territory. *L. M. T. July sess.* 1813, *pass'd* 20*th August in force* 1*st Sept.* 1813.

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* *The clerks of the circuit courts are now required to perform the same duties, possess the same powers and are entitled to the same fees that the clerks of the former and late courts of common pleas; quarter sessions of the peace, orphans courts and county courts were at any time required to perform, possessed or were entitled to at the time of the abolition of those courts, See L. M. T. July sess.* 1813. *p.* 55—56—58—59.

† *See note to sec.* 1 *Ante.*

‡ *Now circuit courts, See title circuit courts sec.* 1, *and note.*

CLERKS OF SUPERIOR COURTS.

How appointed.

Office where to be kept.

Bond.

Oath.

Sec. 1. The judges or a majority of them of the said superior courts shall respectively appoint as soon after the passage of this act as may be, a suitable person in each of the said circuits as clerks of the said court in the circuit for which he shall be appointed, who shall be commissioned by the governor, and hold his office at the place of holding the courts, the said clerks shall give bond with one or more sureties to be approved of by the court, to the governor for the time being and his successors in office in the sum of three thousand dollars, and take an oath faithfully to discharge the duties of his office and seasonably to record the decrees, judgments, orders and proceedings of the court and to do and perform all other duties required or which shall be required of him by law, and to deliver up the writings records and proceedings belonging to his said office, whole, safe and undefaced to his successor in office, which oath shall be endorsed on the back of the said bond and filed in the office of the secretary of the territory. *L. M. T. Dec. sess.* 1815, *p.* 49, *pass'd* 21*st Jan.* 1816.

Seal of office.

Sec. 2. It shall be the duty of each of the clerks to be appointed under this law* to procure a seal purporting to be the seal of the superior court for the circuit in which they shall be appointed. *ib. p.* 57, *ib.*

To provide books, &c.

Sec. 3. And the clerks in pursuance of this act appointed† for the southern and northern circuits shall provide books for their offices and keep the same in every respect, in the same manner, as is now by law required of the clerks of the superior courts in the several counties. *ib. p.* 51, *ib.*

COINING.

See Crimes and Misdemeanours, sec. 13, *Art.* 6.

COMMON OF VILLAGES.

Waste in be stayed.

Sec. 1. If any person or persons being a lot holder in any of the towns or villages of this territory, or not being a lot holder in said towns or villages shall wantonly and unnecessarily cut or destroy any timber growing on the common land of such town or village, it shall and may be lawful for any one person or more being lot holder or holders in such town or village to sue out of the superior court a bill of injunctioon to stay waste on such common, such bill to be in the name of such person or persons sueing for the same and in the name of the inhabitants of such town or village, and such bill shall be proceeded on in the same manner as bills in chancery to stay waste are, and if such bill shall be dissolved, the person or persons sueing the same shall pay costs. *L. M. T. Dec. sess.* 1813, *p.* 70, *pass'd 17th Jan. in force 1st March,* 1814.

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* *Ante sec.* 1.

† *Ante sec.* 1, *of this head.*

Trespassers how proceeded against.

Sec. 2. It shall moreover be lawful for any person inhabitant and lot holder of said town or village whether incorporated or not, in his own name, for the use of said town or village or of the inhabitants thereof to bring and support any action of trespass against any person not inhabitant of said town or village for trespassing on the commons of said towns or villages. *ib. ib. ib.*

COMMON LAW AND STATUTES OF ENGLAND.

How far in force in this territory.

Sec. 1. The common law of England which is of a general nature and all statutes of the British parliament in aid of, or to supply the defects of the said common law, made prior to the fourth year of James the first, and of a general nature, and not local to that kingdom, which said common law and statutes are not contrary to the laws of this territory, and not repugnant to, nor inconsistent with the constitution and laws of the United States shall be the rule of decision in this territory until altered or repealed by the legislature, any law usage or custom to the contrary notwithstanding:

Crimes and punishments.

Provided however, That none of the British statutes respecting crimes and punishments shall be in force in this territory, nor shall any person be punished by common law, where the laws and statutes of this territory have made provision on the subject, but where the laws and statutes of the United States and this territory have not made provision for the punishment of offences, the several courts may proceed to punish for such offences: *Provided,* The punishment shall in no case, be other than fine, and imprisonment, and the term of imprisonment shall not exceed two months, and the fine shall not exceed one hundred dollars. *L. M. T. Dec. sess.* 1815, *p.* 32, *pass'd 19th Jan.* 1816.

Sec. 2. The doctrine of survivorship in cases of joint tenants shall never be allowed in this territory. The doctrine of entails shall never be allowed, and in all cases where any real estate shall be entailed, the whole of the right and interest of, in and to the same, shall vest in fee simple in the person having the first reversion or remainder in said estate, after the life estate is determined in said estate. *ib. p.* 52—3 *ib.*

Survivorship

Entails not allowed.

Sec. 3. None of the Statutes of the British Parliament respecting the additions to names or titles to persons shall ever be in force in this territory. *ib. ib. p.* 41—2 *passed 20th Jan. in force 1st June* 1816.

Statutes concerning addition of names and titles not in force

COMPOUNDING OFFENCES.

See Crimes and Misdemeanors, Sec. 23.

CONSTABLE.

Sec. 1. At the first court of common pleas [circuit court] held in the respective districts [counties] after the aforesaid duplicate being filed, the clerk shall lay such duplicate before the court, who shall appoint in each township one respectable house-holder as constable. Every person so appointed shall exercise the office of constable for two years, and shall within five days enter into a bond with security to be approved of by the clerk of the court of common pleas [circuit court] to the governor and his successors in office in any sum not exceeding one thousand dollars nor less than two hundred dollars at the discretion of the court of common pleas [circuit court,] conditioned that such constable shall execute and return all process to him directed or delivered, and to pay the monies received by him upon the same, and in every respect to discharge the duties of a constable according to law: And shall also take an oath before such clerk faithfully to execute the duties of his office. *Provided,* That if no proper person can be found who is willing to take the office of constable, the court shall appoint some reputable house-holder to fill the office of constable for one year, and if any person so appointed as aforesaid upon ten day's notice of his appointment shall neglect or refuse to give the aforesaid security, or to take upon himself the duties of such office, shall be liable to a fine of twenty dollars to be assessed by the court of common pleas [circuit court] upon ten days notice being

By whom appointed.

Term of service.

Bond.

Condition.

Oath.

Persons may be compelled to serve.

Exempts.

given to such person: *Provided also,* That no person holding a civil or military commission in this territory, nor any person above the age of fifty years shall be compelled to serve as a constable: Nor shall any person be compelled to serve as a constable in any township oftener than once in ten years. *L. L. T. pt.* 1 *p.* 167—8 *passed* 4*th July* 1807.

Bond where filed.

How sued on.

Costs in certain cases.

Limitation.

Sec. 2. Every bond given by constables shall be filed with the clerk of the proper court of common pleas [circuit court] and may be sued for at the instance of any person injured by a breach of such bond, *Provided,* That if a verdict is given for the defendant or the suit discontinued, the person at whose instance the suit is brought shall be liable at the discretion of the court to pay double costs. And no suit shall be instituted on such bond after one year from the time for which such constable was appointed. *ib. p.* 168 *ib.*

May appoint deputies.

Sec. 3. Every constable may appoint one or more deputies for whose conduct he is to be answerable. *ib. ib. ib.*

Vacancies how filled.

Sec. 4. The justices of the peace in every township or a majority of them, shall have power to fill any vacancy that may happen in the office of constable unti the next court of common pleas [circuit court.] *ib. p* 168—9 *ib.*

May be appointed pro. tem. in failure of court to appoint.

Sec. 5. If the court of common pleas [circuit court shall, at any time fail to appoint a constable for an township, it shall be lawful for the justices of the peac of such township or a majority of them, to appoin some person as constable until the appointment is mad by the court. *ib. ib. ib.*

CONTRACTS, PROMISES AND AGREEMENTS

Actions not to be brought on certain contracts, &c.

Sec. 1. No action shall be brought whereby to charg any executor or administrator upon any special promise to answer for any debt or damages out of his ow estate; or whereby to charge the defendant upon an special promise to answer for the debt, default or miscarriage of another; or to charge any person upon a agreement made in consideration of marriage; or upon any contract for the sale of lands, tenements or hereditaments or any interest in or concerning them, o any lease thereof for a longer term than one year; o upon any agreement that is not to be performed withi the space of one year from the making thereof; unles

Unless they are in writing.

the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person by him thereunto properly authorized. *L. M. T. Dec. sess* 1815 *p.* 38—9 *passed 20th Jan. in force* 1*st June* 1816.

CONVEYANCES.

Words, grant, bargain, sell, how considered.

Sec. 1. All deeds to be recorded in pursuance of this law, whereby any estate of inheritance, in fee simple, shall hereafter be limited to the grantor and his heirs, the words 'grant, bargain, sell,' shall be adjudged an express covenant to the grantee, his heirs and assigns; to wit: That the grantor was seized of an indefeisible estate in fee simple, freed from incumbrances done or suffered from the grantor, (except the rents and services, that may be reserved) as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed, and that the grantee, his heirs, executors, administrators and assigns, may in any action assign breaches as if such covenants were expressly inserted.* *Provided always*, That this law shall not extend to leases at rack rent, or to leases not exceeding one and twenty years where the actual possession goes with the lease. *L. L. T. pt.* 1 *p.* 7—8 *passed* 1*st Oct.* 1804.

Proviso.

Deeds to be acknowledged & proven and recorded.

Sec. 2. All deeds and conveyances which shall be made and executed within this district [territory] of or concerning any lands tenements or hereditaments therein or whereby the same may be in any way effected in law or equity shall be acknowledged by one of the grantors or bargainers, or proved by one or more of the subscribing witnesses to such deed before one of the judges of the general [superior] court or before one of the justices of the court of common pleas† of the district [county] where the lands surveyed lie, and shall be recorded in the recorder's office of the district [county] where such lands or hereditaments are lying and being within *twelve months*‡ after the execution of such deed or conveyances, and every such deed and conveyance, that shall at any time after the publication hereof be made and executed and which shall

How.

Where.

When.

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* *For Relinquishment of Dower see Dower sec.* 6.

† *See post sec.* 4, 5, 6, 7, & 9.

‡ *See post sec.* 8.

not be proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent purchaser, or mortgagee for a valuable consideration unless such deed or conveyance be recorded as aforesaid before the proving and recording of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim. *ib. p.* 10 *ib.*

How proved when grantors and witnesses are dead, &c.

Sec. 3. Where the grantors and witnesses of any deed or conveyance are deceased or cannot be had it shall and may be lawful to and for judges of the general [superior] court, or any justices of the court of common pleas of the district* where the land lies, to take the examination of any witness or witnesses on oath or affirmation to prove the hand writing of such deceased witness or witnesses, or where such proof cannot be had then to prove the hand writing of the grantor or grantors, which shall be certified by the judge or justice before whom such proof shall be made and such deed or conveyance, being so proved shall be recorded as is usual in other cases directed above by this law. *ib. p.* 10—11 *ib.*

Acknowledgements by whom to be taken.

Sec. 4. It shall and may be lawful for any judge of the court of common pleas [circuit court] within this territory, or for any justice of the peace of the district [county] where the land lies,† to take the examination of witnesses to any deed or conveyance or the acknowledgment of grantors in any deed or conveyance for lands in the manner and form as is provided by an act entitled "an act for establishing recorders offices."‡ *ib. p.* 247 *passed* 17*th July, in force* 1*st Sept.* 1807.

Clerks of circuit courts may be taken on acknowledgement.

Sec. 5. The clerks of the circuit courts in their respective counties, shall have the same power of taking the acknowledgment and proof of deeds and conveyances of lands or tenements, lying in any part of this territory, as any judge of the superior circuit courts in this territory, or any justice of the peace of the county where the lands lie, has now by law. *Provided,* Such acknowledgment or proof be attested by said clerk under his official seal. *L. M. T. Dec. sess.* 1815 *p.* 5, *passed* 23*d Dec.* 1815.

Deeds &c. executed by non residents how acknowledged &c.

Sec. 6. All deeds and conveyances of any lands or tenements in this territory, made and executed, by any persons not residing within this territory, which shall be acknowledged or proved before any court of record and certified under the seal of such court of record; and all such deeds and conveyances made and executed by such person or persons not residing in this territory as shall be acknowledged or proved before any mayor, chief magistrate or other officer of any city, town or place, where such deeds or conveyances are or shall be made or executed, and certified under the common or public seal of such city, town or place, where they have a public seal, if not under the private seal of such mayor, chief magistrate or other public officer, shall be as valid and effectual in law as if the same had been acknowledged or proved before any judge of the superior or circuit courts in this territory or before any justice of the peace of the county where the lands or tenements lie. *ib. p.* 4—5 *ib.*

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* *See Notes ante sec.* 2.

† *See post sec.* 5 6 *&* 7 *&* 9.

‡ *Ante sec.* 1—2—3.

Transfers and covenant as to equitable titles to be recorded.

Sec. 7. From and after the taking effect of this act, [1st April 1817] in all cases where any person shall purchase any real estate within this territory, from any person having the equitable but not the legal title thereof, and which purchase shall be attested by a deed in the form of a deed of conveyance, or by a bond to make a title to the real estate so sold or by any other instrument of writing, signed by the party to be charged therewith, or by any other person duly authorised to sign the same for him, it shall and may be lawful for the person so purchasing, after proving the execution thereof, to exhibit the said deed, bond or instrument in writing to be recorded in the recorder's office in the same county, wherein the said real estate is situated, where it shall be received and recorded in the same manner and upon the same conditions as are provided by law for mesne conveyances, and any such deed, bond or instrument in writing so recorded, shall impart from the day of recording the same full and perfect notice to all persons of the sale of the land therein mentioned, and all subsequent purchasers of the same land shall be deemed and held in law and equity to be purchasers with notice of the prior sale and shall gain no right to the prejudice of the first purchaser. *ib. Dec. sess.* 1816 *p.* 119 *passed* 1*st Feb. in force* 1*st April* 1817.

Deeds &c. to be recorded within three months.

Sec. 8. All deeds, conveyances, bonds and other obligations for lands tenements or hereditaments hereafter made and proven or acknowledged before any competent authority shall be recorded, in the county in which such lands, tenements, or hereditaments are situate, within three months from the date thereof, or the same shall be void against subsequent purchasers, so recording the said deeds, conveyances, bonds, or other obligations within the time prescribed by this section. *ib. p.* 119 *ib.*

Bonds of conveyance &c. may be acknowledged.

Sec. 9. All deeds, conveyances, bonds and obligations for the conveyance of lands, tenements or hereditaments lying and being situated in this territory, and the right of dower thereto and therein may be acknowledged before any justice of the peace in this territory in the manner and under the same restrictions as are now provided by law. *ib. p.* 120 *ib.*

Forging acknowledgments &c.

Sec. 10. If any person shall forge any entry of the acknowledgments, certificates or endorsements whereby the free-hold or inheritance of any man may be charged, he shall be liable to the penalties against the forgers of false deeds. And if any person shall perjure himself, in any of the cases here mentioned, he shall incur the like penalties as if the oath or affirmation had been in any court of record. *L. L. T. pt.* 1 *p.* 8 *pass'd* 1*st Oct.* 1804.

CORONER.

By whom appointed.

Duties in serving process.

Sec. 1. It shall be the duty of the governor to commission in every district [county] in this territory, now established or hereafter to be establised one proper person as coroner, whose duty it shall be to serve all writs and process when the office of the sheriff of the district [county] shall be vacant or when the sheriff shall be party to the suit, or when it shall be proven to the satisfaction of the court who grant such writs or process that the sheriff is interested in the suit, related to either party, or prejudiced against any party to the suit,* and shall return jurors for the trial of such causes.

Inquests

It shall also be the duty of such coroner to take inquests of violent death and casual deaths happening within their respective districts [counties]; †

Oath.

Bond.

and shall before they enter upon the duties of their respective offices, be severally sworn or affirmed to the faithful discharge thereof and give security in the same manner as sheriffs now are or hereafter shall be required by law to do. *L. L. T. pt.* 1 *p.* 79 *pass'd* 3*d July* 1807.

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* *Where sheriff and coroner are both disqualified, court to appoint Elisors. See Elisors.* † *See Inquest.*

COUNTERFEITING.

See Crimes and Misdemeanours, sec. 13.

COUNTIES.

St Charles.

Sec. 1. All that portion of territory laying north of the river Missouri, bounded as follows to wit. beginning at the junction of the river Missouri with the river Mississippi; thence up the Missouri river in the main channel of the same to a point immediately opposite to the mouth of the Gasconade river; thence in a direct line so as to strike the river Jeffrion, at the distance of thirty miles from its mouth; thence down the said Jeffrion river to the Mississippi river; thence down said river Mississippi in the main channel of the same to the place of begining, shall compose a county and shall be called and known by the name of the county of St. Charles: *Provided nevertheless,* That if the Indian title shall be extinguished to any land bordering on the north or west of the county of St. Charles, in the recess of the general assembly, it shall be the duty of the governor for the time being by proclamation to annex the same to the said county. And the territory so annexed shall, to all intents and purposes be within the limits and compose a part of the county of St. Charles.* *L. M. T. Dec. sess.* 1813, *p.* 6, *pass'd* 31*st Dec.* 1813.

Proviso.

St. Louis.

Sec. 2. All that portion of territory bounded north by the south line of the county of St. Charles, east by the main channel of the river Mississippi, south by a line to commence in the main channel of the Mississippi, immediately opposite to the upper line of a tract of land owned by Auguste Chouteau which is about half way between the mouths of the Plattin and Joachim rivers; thence running in a direct line to a point on the dividing ridge between those waters, where Wright's road falls into the road leading from the town of Herculaneum to the Mine a Burton; thence along said road to a point thereon immediately opposite a noted spring called the "Dripping Spring" which spring is situated about two hundred yards to the south of said road; thence on a direct course to the mouth of Mineral Fork of Grand river; thence such a course as shall leave all the persons now settled in that settlement, usually known by the name of Richwood settlement to the south of said course or line and in the county of Washington: thence south west to the western boundary line of the Osage purchase, thence northwardly on said line to the river Missouri, thence down said river Missouri in the main channel of the same to the south west corner of the county of St. Charles, shall compose one county and shall be called and known by the name of the county of St. Louis.* *ib. p.* 7--8, *ib.*

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* *Part of this county now forms part of the county of Howard. See post sec.* 9.

St Genevieve.

Sec. 3. All that portion of the territory bounded northwardly by the south line of the county of St. Louis, east by the main channel of the river Mississippi, south by a line to commence on the Mississippi river immediately opposite the mouth of apple creek; thence up apple creek to its main source; thence due west to the dividing ridge between Castor and St. Francis rivers; thence in a direct line to the head of twelve mile creek, down said creek to its junction with the river St. Francis; thence due west to Black river; thence northwardly to the most southern source of Flat river; thence down Flat river to its junction with Grand river; thence down Grand river to the south line of the county of St. Louis, shall compose a county and shall be called and known by the name of the county of St. Genevieve. *ib. p.* 8, *ib.*

Washington.

Sec. 4. All that portion of the territory bounded north by the south line of the western part of the county of St. Genevieve; south by a line commencing on Black river, where the south line of the county of St. Genevieve strikes the same; thence west to the western boundary line of the Osage purchase thence northwardly on said line to the south line of the county of St. Louis, shall compose a county and be called and known by the name of the county of Washington. *ib. p.* 8--9, *ib.*

Cape Girardeau.

Sec. 5. All that portion of the territory bounded north by the south lines of the counties of St. Genevieve and Washington; east by the main channel of the Mississippi river, south by a line commencing on the Mississippi river at the head of Tywapity bottom, at the upper end of a tract of land where James Brady now lives; thence west to the south side of the Big swamp; thence a direct line to the Shawnee village on Castor river; thence due west to the western boundary line of the Osage purchase; thence northwardly on

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Part is since taken off and forms part of Howard county: Post sec. 9.

said line to the south line of the county of Washington, shall compose a county and shall be called and known by the name of the county of Cape Girardeau. *ib. page 9, ib.*

New Madrid. Sec. 6. All that portion of the territory bounded north by the south line of the county of Cape Girardeau, east by the main channel of the Mississippi river; south by a line commencing in said river opposite the lower end of the island laid down in the navigator as number nineteen; thence a direct line to strike White river at the mouth of little Red river, thence up Red river to the western boundary of the Osage purchase, thence northwardly on said line to the south line of the county of Cape Girardeau, shall compose a county and shall be called and known by the name of the county of New Madrid.* *ib. p.* 9, *ib.*

Arkansas. Sec. 7. All that portion of the territory bounded north by the south line of the county of New Madrid; east by the main channel of the Mississippi river; south by the thirty third degree of north latitude or northern boundary line of the state of Louisiana, westwardly by the western boundary line of the Osage purchase and by a line to commence upon the river Arkansas where the boundary line of the Osage purchase intersects the same; thence in a direct line to the main source of the Wachita; thence south to the northern boundary line of the state of Louisiana or thirty third degree of north latitude, shall compose a county and be called and known by the name of the county of Arkansas. *ib. p.* 9--10, *ib.*

Lawrence. Sec. 8. All that part of the county of New Madrid and bounded as follows, to wit: Beginning at the mouth of little Red river on the line dividing said county from the county of Arkansas, thence with said line to the river St. François, thence up the river St. François to the division line between the counties of Cape Girardeau and New Madrid; thence with the said last mentioned line to the western boundary line of the Osage purchase; thence with the last mentioned line to the northern boundary line of the county of Arkansas; thence with the last mentioned line to the place of beginning, is hereby laid off and erected into a seperate and distinct county, and which shall be called and known by the name of Lawrence county. *ib. Dec. sess.*

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* *Part of this county now forms the county of Lawrence. Post sec,* 8.

1814, p. 63--64, *pass'd 15th January, in force 1st March,* 1815.

Howard. Sec. 9. All that part of the county of St. Louis, and all that part of the county of St. Charles and bounded as follows to wit, beginning at the mouth of the great Osage river, thence up said river and in the middle of the main channel thereof unto the Osage boundary line, thence north with said boundary line to the river Missouri, thence up the river Missouri, and in the middle of the main channel thereof, to a point opposite the mouth of Kansas river, thence with the indian boundary line (as described in a proclamation of the governor issued the ninth day of March 1815) northwardly one hundred and forty miles, thence eastward with the said line to the main dividing ridge of high ground between the rivers Mississippi and Missouri, thence with the said ridge of high ground to the main fork of the river Cedar, thence down said river to the river Missouri, thence down the river Missouri and in the middle of the main channel thereof to the mouth of the great Osage river, the place of beginning, is hereby laid off and erected into a seperate and distinct county which shall be called and known by the name of Howard county. *ib. Dec. sess.* 1815, *p.* 81--82, *pass'd 23d Jan. in force 1st March,* 1816.

COUNTY LINES.

To be ascertained by order of court.

Sec. 1. Whenever it shall appear to the satisfaction of the court of common pleas or of the county court of any county now established or hereafter to be established [circuit court] that the boundary line or lines of their county are not sufficiently special and well ascertained, it is hereby made the duty of the said court of common pleas or county court that may be hereafter established as aforesaid, [circuit court] to issue an order to any person they shall select as county surveyor, requiring him, on a certain day by them to be fixed on and mentioned in their said order, to ascertain, survey and mark such line or lines, designating in such order from what point to what point. And it shall also be the duty of the said court making the order aforesaid, to give notice thereof at least ten days, prior to running and marking said line or lines to the court of the county adjacent, whereupon the court receiving such notice shall issue an order to any person they may select as their surveyor, ordering him to proceed with the surveyor of the other county to survey and mark such line or lines as may be designated in said order. *L. M. T. Dec. sess.* 1814, *p.* 34–5, *pass'd* 1*st Jan.* 1815.

How order to be executed.

Sec. 2. The persons so as aforesaid selected as surveyor shall, on the reception of such order from their respective courts, proceed, on the day mentioned in said order to ascertain, mark and survey such line or lines, and if they shall not be able to finish the same in one day, to continue from day to day (Sundays excepted) until the work shall be finished. They shall each make out a return of such line or lines so as aforesaid surveyed to their respective courts at their next succeeding term, which if approved by the court shall be recorded by the clerk as evidence of said line or lines. *ib. p.* 35. *ib.*

Return.

Expenses how paid.

Sec. 3. The said surveyor shall respectively make out their accounts of expences for surveying and marking said line or lines, and if allowed by the courts shall be equally borne by said counties, and paid out of their respective levies or treasuries. *ib. p.* 35–6, *ib.*

Proceeding in case of non attendance of one surveyor.

Sec. 4. In case either person shall not attend as surveyor for the purpose of surveying and marking said line or lines, it shall and may be lawful for the person attending on the part of either county or court to proceed alone to survey and mark said line or lines as herein before provided. And the surveyor so making the survey shall make two copies or plots of the line or lines thus run, and return one copy to each of the courts, which being approved of as aforesaid shall be recorded, and be the lines of the aforesaid. And the expences accruing from running such line or lines shall be borne equally by the two counties, and be paid as is provided in the third section of this act. *ib. page* 36, *ib.*

Expenses.

COURTS.

See Titles, Superior Courts, Circuit Courts, Chancery Proceedings and Judicial Proceedings.

COURTS MARTIAL.

See Militia.

MURDER.*

Murder how punished.

Sec. 1. If any person or persons shall within this territory commit the crime of wilful murder, such person or persons on being thereof convicted, shall suffer death. *L. L. T. pt.* 1 *p.* 304, *pass'd* 4*th Nov.* 1808.

Body of offender may be delivered to a surgeon for dissection.

2. The court before whom any person shall be convicted of the crime of murder, for which he or she shall be sentenced to suffer death, may at their discretion add to the judgment, that the body of such offender shall be delivered to a surgeon for dissection. And the sheriff who is to cause such sentence to be executed, shall accordingly deliver the body of such offender, after execution done, to such surgeon as the court shall direct for the purpose aforesaid. *Provided,* That such surgeon, or some other person by him appointed for that purpose, shall attend to receive and take away the dead body at the time of the execution of such offender. *ib.* 304—5 *ib.*

Proviso.

Penalty for rescuing body of offender.

3. If any person or persons after such execution had, by force rescue or attempt to rescue the body of such offender, out of the custody of the sheriff or his officers, during the conveyance of such body to any place for the dissection as aforesaid; or shall by force rescue or attempt to rescue such body from the house of any surgeon where the same shall have been deposited in pursuance of this act; every person so offending, shall be liable to a fine not exceeding one hundred dollars, and an imprisonment not exceeding twelve months. *ib. p.* 305 *ib.*

MANSLAUGHTER.

Manslaughter

Sec. 2. If any person or persons, shall within this territory commit the crime of Man-slaughter, and shall be thereof convicted, such person or persons shall be imprisoned not exceeding three years and fined not exceeding one thousand dollars. *ib. p.* 305—6 *ib.*

Justifiable homicide.

2. *Provided,* That if any person in the just and necessary defence of his own life, or the life of any other person, shall kill or slay any other person attempting to rob or murder, in the field or highway or to break into a dwelling-house, if he cannot with safety to himself otherwise take the felon, or assailant, or bring him to justice, he shall be deemed guiltless; or if any person while aiding in the legal execution of process,

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* *See also Burglary 4th Instance—post sec* 7, *and Robbery 3d Instance, post sec.* 8.

shall kill the party unlawfully resisting, such person shall be deemed guiltless. *ib. p.* 306 *ib.*

Voluntary homicide, felony may be waived.

3. Wheresoever any person shall be charged with voluntary homicide, happening in consequence of an unlawful act, it shall be lawful for the attorney general or any other person prosecuting the pleas of the United States in this territory, to waive the felony, and to proceed against and charge such person with a misdemeanor, and to give in evidence any act or acts of manslaughter, and such person or persons on conviction shall be fined and imprisoned at the discretion of a jury, not exceeding one year's imprisonment, and not exceeding the fine of one thousand dollars; or the prosecutor as aforesaid, may charge both offences in the same indictment, in which case the jury may acquit the party of the one and find him or her guilty of the other charges. *ib. ib. ib.*

RAPE.

Rape.

Sec. 3. Any person or persons, who shall have carnal knowledge of any woman, forcibly and against her will, shall be deemed guilty of a rape, and upon conviction thereof, shall be sentenced to castration, to be performed by the most skilful physician, at the expense of the territory, in case the party convicted shall not have sufficient property to pay the same and costs. *ib. p.* 307 *ib.*

How punished.

MAIMING.

Maiming defined.

Sec. 4. If any person or persons within this territory on purpose and of malice aforethought shall unlawfully cut or bite off the ear or ears or cut out or disable the tongue, put out an eye, or slit,cut,or bite off the nose or lip, or in any wise injure either of the members afore-mentioned, with intent to maim or disfigure such person, or shall cut, bite or disable any limb or member of any person, or shall shoot at or stab, with any weapon with intent to kill, maim, or injure such person in any member before mentioned; then and in every such case, the person or persons so offending, their counsellors, aiders, or abettors, knowing of and privy to the offence aforesaid, shall on conviction be imprisoned not exceeding seven years and fined not exceeding three thousand dollars. *L. M. T. Dec. sess.* 1816 *p.* 122 *passed* 1st *Feb. in force* 1st *May* 1817.

Punishment.

ASSAULT AND BATTERY.

Assault and battery.

Sec. 5. If any person shall unlawfully assault or threaten another in any menacing manner, or shall strike or wound another, he shall upon conviction thereof be fined in a sum not exceeding one hundred dollars: And the court before whom such conviction shall be had, may in their discretion, cause the offender to enter into a recognizance with security for the peace and good behaviour for a term not exceeding one year. *L. L. T. pt.* 1*st p.* 319, *pass'd* 4*th Nov.* 1808.

How punished.

ARSON.

Arson.

Sec. 6. If any person or persons, shall wilfully and maliciously burn or cause to be burned, or shall wilfully and knowingly aid or assist in burning or causing to be burned, any dwelling-house, store house, barn, stable, grist, saw or fulling-mill, or other building adjacent or contiguous thereto, every person so offending shall be deemed guilty of arson, and shall be imprisoned not exceeding seven years, and be fined not exceeding ten thousand dollars.* *ib. p.* 307 *ib.*

Punishment

BURGLARY.

Burglary. 1st instance.

Sec. 7. If any person or persons shall in the night season break open and enter, any dwelling-house, shop, store or vessel in which any person or persons dwell or reside with a view and intention of stealing therefrom, he, she or they so offending shall be deemed guilty of burglary, and on conviction thereof, shall be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Punishment.

2d instance.

2. If any person or persons so breaking and entering any dwelling-house, shop, store or vessel as aforesaid, shall actually steal therefrom any money, goods or chattels, he, she or they so offending shall on conviction thereof, moreover be fined in treble the value of the property stolen, one third part of which shall go to the party from whom the same has been stolen, and the other two thirds to the use of the territory, and be whipped on his or her naked back not exceeding thirty nine stripes.

Punishment.

3d instance.

3. If the person or persons so breaking and entering any dwelling-house, shop, store or vessel as aforesaid, shall commit or attempt to commit any personal abuse, force or violence or shall be armed with any dangerous weapon or weapons as clearly to indicate a violent intention, he, she or they so offending upon conviction thereof, shall moreover stand in the pillory for the space of three hours and be imprisoned not ex-

Punishment.

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* *If by a Slave, the punishment is death.—post sec.* 49.

ceeding seven years in addition to the former punishment.

4th instance. If death ensue

4. And if the death of any innocent person shall ensue from the breaking and entering any dwelling-house, shop, store or vessel as aforesaid, in any of the instances as aforesaid, the perpetrator and the accessary before the fact, shall be deemed guilty of murder. *ib. p.* 308–9 *ib.*

ROBBERY.

Robbery defined.

Punishment.

Sec. 8. If any person or persons shall feloniously and forcibly take any money, goods or chattels, or effects from the person of another in the field or highway, or any other place, he she or they so offending shall be deemed guilty of robbery and on conviction shall suffer as in the second instance of burglary.*

If with violence &c

Punishment

2. Whosoever shall commit such robbery with personal abuse or violence or be armed at the time with any dangerous weapon so as clearly to indicate an intention of violence, he, she or they so offending, upon conviction thereof shall suffer as in the third instance of burglary.†

If death ensue.

Murder.

3. And if the death of an innocent person should ensue from such robbery, the perpetrator or perpetrators, and the accessaries before the fact shall be deemed guilty of murder. *L. M. T. Dec. sess.* 1816 *p.* 122, *passed 1st Feb. in force 1st May* 1817.

LARCENY.*

Larceny first offence.

Sec. 9. If any person or persons shall steal from any other person or persons or from the dwelling-house or other house of any person or persons any money, goods, wares and merchandizes or any other personal property or thing whatever, he, she or they so offending shall be deemed guilty of larceny and upon conviction thereof shall for the first offence restore to the owner the thing stolen and pay to him the value thereof, and if the thing stolen be not restored shall pay to him double the value thereof and shall be fined in any sum not exceeding double the value of the thing stolen and shall be whipped not exceeding thirty nine stripes and stand in the pillory not exceeding two hours and upon a second conviction, restitution or payment shall be made to the owner as aforesaid and a fine paid to the ter-

2d offen

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* *Ante sec. 7 art,* 2.

† *Ante sec. 7, art,* 3.

* *The act passed* 30*th Oct* 1810, *entitled "An act to amend an act the punishment of certain crimes," is superseded by this section.*

ritory not exceeding fourfold the value thereof as aforesaid and the offender shall be whipped not exceeding seventy five stripes to be well laid on his, her or their bare back. *L. M. T. Dec. sess.* 1815 *p.* 114—5 *passed 24th Jan.* 1816.

HORSE STEALING.

Horse stealing made felony.

Punishment.

Sec. 10. If any person or persons shall steal from any other person or persons within this territory, any horse, mare, gelding, mule or ass, he, she or they so offending, shall on conviction thereof by due course of law be deemed guilty of felony, and be fined not exceeding five hundred dollars, receive not exceeding two hundred stripes on his or her bare back, well laid on, pay double damages to the party injured and stand committed till sentence is complied with, and shall also be disqualified from voting at any election, or of giving evidence in any court of justice, or of holding any office of profit, honor or trust in this territory. *ib. page* 114 *ib.*

HOG STEALING.

Hogstealing, what deemed

Punishment.

Proviso.

Sec. 11. Any person who shall steal any hog, shoat or pig, or mark or alter the mark of any hog, shoat or pig, with an intention of stealing the same, for every such offence, upon being thereof lawfully convicted shall be fined in any sum not exceeding one hundred dollars and moreover receive on his or her bare back any number of lashes not exceeding thirty nine nor less twenty five: *Provided nevertheless,* That nothing herein contained, shall be so construed as to prevent any person from marking or killing his own unmarked hogs, which may be running at large with others in his own mark.* *L. L. T. pt.* 1 *p.* 320 *passed 4th Nov.* 1808.

Certain acts deemed Hog-stealing.

2. If any person shall cause to be brought to his own house, or any other house or on board any vessel, any hog, shoat or pig, without ears, he or she so offending shall be adjudged a hog-stealer: *Provided nevertheless,* That any person may bring or cause to brought to his or her own, or any other house, or on board any boat or boats or other vessel, his or her own swine, though without ears, he or she proving the same to be his or her property. *ib. p.* 329 *ib.*

FORGERY.

Forgery what deemed.

Sec. 12. Whosoever shall forge, deface, corrupt or

For the offence of killing Hogs &c. in the woods, see Marks and Brands, sec. 8.

embezzle, any charters, gifts, grants, bonds, bills, conveyances, wills, testaments or written contract of any nature or kind, or shall deface or falsify any enrolment, registry or record, or matter or instrument recorded, or shall counterfeit the seal or hand writing of another, with intent to defraud, every person so offending upon conviction thereof shall be fined in double the sum he shall thereby have defrauded or attempted to defraud another, and shall moreover be incapable of sustaining any office of trust or profit in the territory. And all persons wilfully aiding or assisting in these crimes, or who shall cause or procure the same, or any of them to be perpetrated, shall be deemed principals.

Forging seal of territory &c.

2. And any person or persons who shall fraudulently forge, deface, corrupt or counterfeit the seal of this territory, or the seal or signature of any officer within the same, every person so offending upon conviction shall be fined not exceeding five thousand dollars, and imprisoned not exceeding five years. *ib. p.* 310–11 *ib.*

FORGING AND COUNTERFEITING.

Forging or counterfeiting a bill or note.

Sec. 13. If any person or persons within this territory shall falsely make, forge or counterfeit, or willingly aid or assist in falsely making, forging or counterfeiting any bill or note, in imitation of, or purporting to be, a bill or note, issued by order of the president, directors and company of any bank of the United States, or any individual state or territory, co-partnership or body politic or any order or check on any bank or corporation, or any cashier thereof, or shall falsely alter or cause or procure to be falsely altered, or willingly aid or assist in falsely altering, any bill or note issued by the president directors and company of any bank of the United States or any individual state or territory, co-partnership or body politic or any order or check on any bank or corporation, or any cashier thereof, shall be deemed and adjudged guilty of felony, and on conviction thereof shall be fined in any sum not exceeding one thousand dollars, stand in the pillory four hours, receive on his or her bare back, not more than two hundred and fifty, nor less than fifty stripes or lashes, be imprisoned not more than six months, and rendered incapable of being a witness, juror, or voting at any election or holding any office of profit or trust under the laws of this territory.

Falsely altering a bill or note.

Punishment.

Passing counterfeit notes.

2. If any person or persons within this territory shall pass, utter or publish or attempt to pass utter or

publish as true any falsely altered, forged and counterfeited bill or note in imitation of or purporting to be a bill, note or check issued by order of the president, directors and company of any bank of the United States, or any individual state, territory, co-partnership or body politic, or any false forged or counterfeited order or check, upon any bank or corporation or any cashier thereof knowing the same to be falsely forged or counterfeited, or shall pass, utter or publish, or attempt to pass, utter or publish as true any falsely altered, forged or counterfeited bill or note in imitation of or purporting to be a bill or note issued by or by order, of the president directors and company of any bank of the United States, or any individual state, or territory, or body politic, or any falsely altered order or check, or any bank or corporation or any cashier thereof, knowing the same to be falsely altered, forged or counterfeited with intention to defraud the said banks or any of them or any corporation, body politic, or any other persons; or shall falsely make, alter, forge or counterfeit or cause or procure to be falsely made altered forged or counterfeited, or willingly aid or assist in falsely making forging or counterfeiting any endorsement or assignment of any bill of exchange or promissory note or other security for the payment of money, or delivery of goods, or any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for a note, bill or other security for the payment of money or delivery of goods, or any receipt of any money paid, or contract discharged, or any warrant or order for the payment of money or delivery of goods, with intent to defraud any person or co-partnership whatsoever, or shall utter or publish as true any false, altered, forged or counterfeited endorsement or assignment of any bill of exchange or promissory note, for the payment of money or delivery of goods or acceptance of any bill of exchange, or accountable receipt for any note bill or other security for the payment of money or delivery of goods, or any warrant or order for the payment of money or delivery of goods, with intent to defraud any person or persons or corporation, knowing the same to be falsely altered forged or counterfeited, every such person so offending shall be deemed and adjudged guilty of felony, and on conviction thereof, by due course of law shall pay to the party injured double the value

Passing &c. falsely altered Bill &c.

Forging &c. an assignment of note.

Passing &c. indorsement &c.

Punishment.—

of the money of which he was defrauded or attempted to be defrauded, shall receive on his, her or their bare back not more than seventy five lashes, shall stand two hours in the pillory, shall be fined not exceeding one thousand dollars, and stand committed until the sentence of the court be complied with, and from and after such conviction, be incapable of holding any office in this territory, or of being a witness, a juror or of voting at any election.

Making or using &c. any frame or mould for making certain paper.

Making &c. certain paper.

Or engraving cutting &c. plates for notes &c.

3. If any person in this territory shall make or use, or cause or procure to be made or used, or knowingly aid or assit in the making or using of any frame or mould, or part of any frame, or mould for the making of paper with the name or firm appearing visible in the substance or in the surface of the paper, of any person or persons, body politic or corporate or other banking company or partnership, carrying on the business of bankers, without an authority in writing for that purpose from such person or persons, body politic or corporate, or other banking company or partnership, or from some person or persons authorised to give such authority, or shall manufacture, or make or cause or procure to be manufactured or made, or aid or assist in the manufacturing or making of any paper having the name or firm appearing visible in substance or on the surface of the paper of any person or persons, body politic or corporate, or other banking company or partnership whatsoever, carrying on the business of bankers; or any person or persons without such authority as aforesaid, shall by any act means, mystery or contrivance, cause or procure, or shall knowingly aid or assist in causing or procuring the name or firm of any person or persons body politic or corporate, or other banking company or partnership, carrying on the business of bankers, to appear visible in the substance or on the surface of the paper whereon the same shall be written or printed; or if any person or persons shall engrave, cut, edge or scrape in Mezzentinto or other print, or otherwise or shall by any other means cause or procure to be engraved, cut, edged or scraped in Mezzentinto or otherwise; or shall knowingly aid or assist, in making, engraving, edging or scraping in Mezzentinto or otherwise, or by any other means or device making in or upon any plate of copper, brass, pewter, glass or any other metal or mixture whatever or upon wood or any other material, or any plate what-

soever, any promissory note, inland bill, bill of exchange, order or check for the payment of money, or part of any promissory note, inland bill, bill of exchange order or check for the payment of money, purporting to be a promissory note, inland bill, bill of exchange, or, or part of any promissory note, bill of exchange, inland bill, order or check for the payment of money of any person or persons, body politic or corporate, banking company or partnership, carrying on the business of bankers, without any authority in writing for that purpose from such person or persons, body politic or corporate, banking company or partnership, or some person or persons duly authorised to give such authority; or shall use any other device for the making or printing of any such promissory note, inland bill, bill of exchange, order or check for the payment of money or any part or parts of such promissory note, inland bill, bill of exchange, order or check for the payment of money without such authority in writing as aforesaid, any person offending in any of the cases aforesaid, being thereof convicted by due course of law shall be deemed and adjudged guilty of felony and be punished as is provided in the first section of this act.*

Or using any other device.

Punishment.

4. If any person or persons shall vend, expose to sale, publish or dispose of, or cause or procure to be vended exposed to sale, published or disposed of any paper having the name or firm appearing visible in the substance or on the surface of the paper of any person or persons, body politic or corporate, or any other company or partnership, whatsoever, carrying on the business of bankers, without any authority in writing, for that purpose from such person or persons, body politic or corporate or other banking company or partnership, or from some person or persons authorised to give such authority, or shall have in his, her or their possession any frame or mould or part of a frame or mould for making of such paper, or any part thereof without such authority as aforesaid; or any plate engraven, cut, edged or scraped; or by any other ways and means divised for the making or printing of any promissory note, inland bill of exchange, order or check for the payment of money or any part or parts of such promissory note, inland bill, bill or exchange order or check, without authority in writing for that purpose.

Vending certain paper.

Having a frame or mould &c.

Or any plate.

Without authority.

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* *See ante sec.* 13. *Art.* 1 *of this head.*

from such person or persons, body politic or corporate, or other company or partnership or by some person or persons authorised to give such authority, and shall not be able to prove that such paper, mould, frame, plate or device came into his, her or their possession without his, her or their knowledge or consent, every person so offending in any of the cases aforesaid. and being thereof convicted by a due course of law shall receive on his, her or their bare backs not more than seventy five lashes, shall stand two hours in the pillory, shall be fined not exceeding one thousand dollars, and from and after such conviction, be incapable of holding any office in this territory or of being a witness or a juror or of voting at any election. Punishment.

5. On the trial of any offender or offenders against any of the foregoing provisions of this act.* The president, cashier, directors and other officers of any bank, or either of its officers of discount and deposit, and all stockholders or persons interested in such bank shall be admitted as competent witnesses. And on all trials under the first and third sections of this act,† it shall be necessary for the prosecutor, to produce on the trial, as evidence, an authenticated copy of the charter of the bank, or of the act creating the copartnership, corporation or body politic, under the seal of the United States, or of the individual state where the same is situated, and which shall be considered as evidence of the existence of such bank, copartnership, corporation or body politic: *Provided however*, That it shall not be necessary to produce on any such trial, an authenticated copy of any charter granted by the legislature of this territory, to any person or persons whomsoever to carry on the banking business in the said territory; nor any charter granted by the Congress of the United States, either for the establishment of a national Bank, or any other bank or banks in the territory of Columbia. Who may be witnesses. Charter to be produced. How for evidence. Proviso.

6. If any person or persons other than the persons employed in the mint of the United States, shall knowingly make or mend, or begin or proceed to make or mend or assist in the making or mending of any puncheon, counter puncheon, matrix, stamp, die, pattern or mould of steel, iron, lead, silver or other metal of metals, mixture or mixtures whatsoever, or of spaud, or Making or mending instruments for coining &c.

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* *Sec. 13 of this head Art* 1, 2, 3 & 4.

† *Sec. 13 of this head. Art* 1 & 3.

Knowingly buying selling or concealing such instrument.

Or having them in possession.

Colouring or gilding coin.

Punishment.

Clipping coin.

Punishment.

fine saunders earth or sand, or of any other materials whotsoever, in or upon which there shall be, or be made or impressed, or which will make or impress the figure, stamp, resemblance or similitude of both or either of the sides or flats of any gold or silver coin, current within the United States or this territory, or shall knowingly make or mend, or begin or proceed to make or mend or assist in the making or mending of any edger or edging tool, instrument or engine, not of common use, but construed for the purpose of marking money round the edges with letters, graining or other marks or figures resembling those on the edges of the gold or silver coin of the United States, or of any other gold or silver coin current in the United States or in this territory, or shall knowingly buy, sell or conceal such puncheon or counter puncheon, matrix, stamp, dye, edger cutting instrument or other tool or instrument as before mentioned or, without lawful authority or sufficient excuse for that purpose, shall knowingly have in his, her or their house or houses, custody or possession, any such puncheon counter puncheon, matrix, stamp, dye, edger or other tool or instument, before mentioned; or shall colour, gild or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any piece of metal or coin, resembling the gold or silver coins current in the United States or this territory, every such person or persons, their councellors, procurors aiders and abettors, shall on conviction thereof, by due course of law, be punished as prescribed by the first section of this act:* And if any person or persons shall clip with intention to defraud, any of the coins made current in the United States of shall aid or procure any of the coins made current in the United States, to be clipped, with intention to defraud every such person on conviction thereof shall receive not less than twenty five, nor more than seventy five lashes on his, her or their bare back.

If any frame or mould for making paper plate, tool instrument &c. be found.

7. If any frame or mould or any part of any frame or mould for the making of paper with the name or firm appearing visible in the substance or on the surface of such paper of any person or persons, body politic or corporate or other company or copartnership carrying on the business of banking, or any plate or cu-

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* *See Ante this Head, Art.* 1, *sec.* 13.

How to be disposed of.

graving whatsoever used or designed, or fit to be used or designed for the engraving cutting, edging or scraping in Mezzentinto or otherwise howsoever, of the whole or any part of any promissory note, inland bill, bill of exchange, order or check for the payment of money, of any person, body politic or corporate, company or partnership carrying on the business of bankers within the United States or any of the territories thereof, or any tool instrument, or engine used or designed for coining or counterfeiting gold or silver coin or any part thereof shall be hid and concealed in any place, or found in any house, custody or possession of any person not then employed by such person or persons, body politic or corporate, company, copartnership carrying on the business of bankers or in the mint of the United States, the same may be seized by any person or persons whomsoever, with or without a warrant, and by such person or persons carried forthwith to some justice of the peace of the county, who shall safely keep and produce the same in evidence; on the trial of any offender against any of the foregoing provisions of this act after which they shall be forthwith destroyed. *L. M. T. Dec. sess.* 1815. *p.* 105 *to* 114, *pass'd Jan.* 24*th*, 1816.

STEALING OR FALSIFYING RECORDS.

Stealing or falsifying records, process &c.

Sec. 14. If any person shall feloniously steal, take away, alter, falsify or otherwise avoid any record, writ proceess or other proceedings in any of the courts of this territory, by means whereof any judgment shall be reversed made void, or not take effect, or if any person shall acknowledge or procure to be acknowledged in any of the courts aforesaid, any recognizance, bail or judgment in the name or names of any other person or persons, not privy or consenting to the same, every such person or persons, on conviction thereof, shall be fined, not exceeding five thousand dollars, or be imprisoned not exceeding seven years and whipped not exceeding thirty nine stripes: *Provided nevertheless*, That this act shall not extend to any acknowledgment of any judgment or judgments by any attorney or attornies duly admitted, for any person or persons against whom any judgment or judgments shall be had or given. *L. L. T. pt.* 1, *p.* 311, *pass'd Nov.* 4*th* 1808.

How punished.

Proviso.

MAKING FRAUDULENT DEEDS, &c.

Making fraud-

Sec. 15. All bonds, bills, deeds of sale, gifts, grants ulent deeds. &c.

or other conveyances or obligations whatever made with intent to deceive and defraud others, or to defeat creditors of their just debts or demands shall be null and void,* and the person or persons so offending

How punished.

shall upon conviction thereof be fined in a sum not exceeding three hundred dollars and pay double damages to the party or parties injured. *ib. p.* 319, *ib.*

FRAUDULENT PRETENCES.

Obtaining money or goods by fraudulent pretences.

Sec. 16. If any person or persons knowingly and designedly by any false pretence or pretences, obtain from any other person or persons, any monies, goods or merchandize or effects whatever, with intent to cheat or defraud such person or persons of the same,

How punished.

he, she or they so offending shall on conviction thereof by verdict or confession on judgment suffer such punishment as in case of larceny is provided to be inflicted,† *ib.* 319–320, *ib.*

RECEIVERS OF STOLEN GOODS, &c.

Receiving stolen goods & concealing felons &c.

Sec. 17. If any person or persons shall receive or buy any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, or shall receive, harbor or conceal any felons or thieves, knowing them to be so, he she or they,

How punished.

being of either of the said offences legally convicted, shall be liable to the like punishments as in case of larceny before are prescribed. *ib. p.* 312--13, *ib.*

MISPRISON OF FELONY.

Misprison of felony.

Sec. 18. If any person or persons, having knowledge of the actual commission of the crime of wilful murder or other felony within this territory, shall conceal and not as soon as may be disclose and make known the same, to some one of the judges or justices of the peace, within the said territory, on conviction thereof such person or persons shall be adjudged guilty

How punished.

of misprison of felony, and shall be imprisoned not exceeding three years, and fined not exceeding five hundred dollars. *ib. p.* 305, *ib.*

PERJURY AND SUBORNATION OF PERJURY.

Perjury &c.

Sec. 19. If any person shall wilfully and corruptly commit perjury or shall by any means, procure any person to commit corrupt and wilful perjury on his or her oath or affirmation in any suit, controversy, matter, or cause depending in any of the courts of this territory, or in any deposition taken pursuant to the laws of the same, every person so offending, and being thereof convicted, shall be imprisoned not exceeding three years, and fined not exceeding eight hundred dollars, and shall stand in the pillory for one hour, and be thereafter rendered incapable of giving testimony in any of the courts of the said territory until such time as the said judgment so given against the said offender shall be reversed.

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* *See also Frauds sec.* 1.

† *Ante sec.* 9, *of this head.*

Punishment.

2. In every presentment or indictment to be prosecuted against any person for wilful and corrupt perjury it shall be sufficient to set forth, the substance of the offence charged upon the defendant, and by what court, or before whom the oath or affirmation was taken (averring such court or person to have a competant authority to administer the same) together with the proper averment or averments to falsify the matter or matters, wherein the perjury or perjuries is or are assigned, without setting forth, the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity other than as aforesaid, and without setting forth the commission or authority of the court or person or persons before whom the perjury was committed.

Purjury how to be laid in indictment.

3. In every presentment or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant without setting forth the bill, answer, information, indictment, declaration or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the court or person or persons before whom the perjury was committed or was agreed or promised to be committed. *ib. p.* 313--314 *ib.*

Subornation of purjury how laid in indictment.

BRIBERY.

Sec. 20. If any person shall directly or indirectly give any sum or sums of maney or any other bribe present or reward, or any promise contract or obligation or security for the payment or delivery of any money present or reward, or any other thing to obtain or procure the opinion, judgment or decree of any judge or justice acting within this territory, in any suit controversy, matter or cause, depending before him or them and shall thereof be convicted such person or persons so giving, promising, contracting or securing to be given, paid or delivered any sum or sums of money,

Bribery.

Punishment.

present, reward or other bribe as aforesaid and the judge or justice, who shall in any wise accept or receive the same, on conviction thereof, shall be fined and imprisoned at the discretion of the court and shall forever be disqualified to hold any office of honor trust or profit within this territory. *ib. p.* 314--15, *ib.*

OBSTRUCTING EXECUTION OF PROCESS.

Obstructing process.

How punished.

Sec. 21. If any person or persons shall knowingly and wilfully obstruct, resist or oppose any officer of this territory in serving or attempting to serve or execute any *mesne*, process or warrant or any rule or order of any of the courts of the territory or any other legal or judicial writ or process, whatsoever, or shall assault beat or wound any officer or other person duly authorised in serving or executing any writ, rule, order, process or warrant aforesaid, every person so knowingly and wilfully offending in the premises, shall on conviction thereof be imprisoned not exceeding twelve months and fined not exceeding three hundred dollars. *ib. p.* 315, *ib.*

RESCUE.

Rescue. 1st instance.

2d. instance.

How punished.

Sec. 22. If any person or persons shall by force set at liberty or rescue any person who shall be found guilty of murder or other capital crime, or rescue any person convicted of the said crimes, going to execution, or during execution, every person so offending and being thereof convicted shall suffer death. And if any person shall by force set at liberty or rescue any person who before conviction shall stand committed for any of the capital offences aforesaid; or if any person or persons shall by force set at liberty or rescue any person committed for or convicted of any other offence against this territory every person so offending shall on conviction be fined not exceeding five hundred dollars and imprisoned not exceeding one year. *ib. p.* 315-6, *ib.*

COMPOUNDING OFFENCES.

Compounding offences.

How punished.

Sec. 23. If any person or persons agree or compound to take satisfaction for any criminal offence, such person or persons shall forfeit twice the value of the sum or thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief provided he prosecutes such thief. *ib. p.* 316 *ib.*

USURPATION.

Usurpation.

Sec. 24. No person shall take upon himself to exercise or officiate in any office or place of authority in this territory without being lawfully authorised there-so, and if any person shall presume so to do, he shall upon conviction thereof be fined in a sum not exceeding one hundred dollars. *ib. p.* 318—19 *ib.*

Fined.

RIOTS, ROUTS, and UNLAWFUL ASSEMBLIES.

Sec. 25. If three or more persons shall assemble together with an intent to an unlawful act, with force or violence, against the person or property of another or to do any other unlawful act, against the peace and to the terror of the people, or being lawfully assembled shall agree with each other to do any unlawful act as aforesaid and shall make any movement or perpetration therefor, the persons so offending and upon conviction thereof, shall pay as a fine each to the territory the sum of twenty dollars, and find securities for their good behaviour respectively for the space of six months and stand committed until sentence be performed.

Riots &c. 1st instance.

2. Whenever three or more persons shall be assembled as aforesaid, and proceeding to commit any of the offences as aforesaid, it shall be the duty of all judges and justices of the peace and sheriffs and all ministerial officers immediately upon actual view or as soon as may be upon information, to make proclamation in the hearing of such offenders, if silence can be obtained commanding them in the name of the United States, to disperse and depart to their several homes or lawful employments, and if upon such proclamation, or when silence cannot be obtained, such persons so assembled shall not disperse and depart as aforesaid, it shall then be the duty of the said judges, justices of the peace and sheriffs and other ministerial officers respectively to call upon persons near and of abilities and throughout the district [county,] if necessary, to be aiding and assisting in dispersing and taking into custody all persons assembled as aforesaid: And all military officers and others called upon as aforesaid are hereby ordered and directed to render assistance and full obedience in this behalf, upon the penalty of ten dollars each, for every neglect or refusal herein, and commitment in case of non-payment: If any of the persons so unlawfully assembled, shall be killed, maimed or otherwise injured in consequence of resisting the judges or others in dispersing and apprehending, or in attempting to disperse and apprehend them, the said judges, justices of the peace, and sheriffs, and other ministerial officers and others acting by their authori-

Duty of judges &c.

ty, or the authority of any of them, shall be holden guiltless.

Obstructing said authority &c.

Committing unlawful act. 1st offence.

2d. offence.

3. And if any person or persons shall forcibly obstruct any of the authority aforesaid, or if any three or more persons shall continue together, after proclamation as aforesaid made or attempted to be made, and prevented by such rioters, or in case of no proclamation any three or more persons being assembled as aforesaid, shall commit any unlawful act as aforesaid, every offender upon conviction thereof shall be fined in a sum not exceeding three hundred dollars, and give security for good behavior for a time not more than one year, at the discretion of the court before whom the conviction may be had: and upon a second conviction each and every offender shall be fined as aforesaid and find sureties for good behaviour and the peace for a time not exceeding ten years, and may be committed to jail in the district [county] until srntence be fully performed. *ib. p.* 317—18—19 *ib.*

BIGAMY.

Bigamy what deemed.

How punished

Sec. 26. If any person or persons within this territory being married or who shall hereafter marry, do at any time marry any person or persons the former husband or wife being alive, upon conviction thereof shall be whipped on his or her bare back not less than one hundred stripes well laid on; be fined in not less than one hundred nor more than five hundred dollars, to and for the use of the party injured, and imprisoned not less than six nor more than twelve months and thereafter be rendered infamous; be incapable of giving testimony or holding any commission civil or military in this territory. And the party and parties so offending shall receive such like proceedings, trial and execution within this territory as if the offence had been committed in the district [county] where such person shall be taken or apprehended, *Provided,* that nothing herein contained shall extend to any person or persons whose husband or wife shall be continually remaining beyond the seas for the space of seven years together. or whose husband or wife shall absent him or herself, the one from the other for the space of seven years together in any part of the United States of America or elsewhere, the one of them not knowing the other of them to be living within that time. *Provided also,* That nothing herein contained shall extend to any person or persons that are or shall be at the time of such mar-

Proviso in case of absence beyond seas &c.

In case of divorce.

riage divorced by lawful authority, or to any person or persons where the former marriage hath been or hereafter shall be by lawful authority declared to be void and of no effect: Nor to any person or persons for or by reason of any marriage had or made or hereafter to be had or made within the age of consent. *ib. p.* 320—1 *ib.*

DISOBEDIENCE OF CHILDREN OR SERVANTS.

Disobedient servants or children how dealt with.

Sec. 27. If any children or servants, shall contrary to the obedience due to their parents or masters, resist or refuse, to obey their lawful commands, upon complaint thereof to any justice of the peace, it shall be lawful for such justice, to send him or them so offending to the jail or house of correction there to remain, until he or they shall humble themselves to the said parent's or master's satisfaction; and if any child or servant shall contrary to his bounden duty presume to assault and strike his parent or master, upon complaint and conviction thereof, before two or more justices of the peace, the offender shall be whipped not exceeding ten stripes. *ib. p.* 322 *ib.*

Assaulting parent or master.

Court to issue process.

Sec. 28. The court of quarter sessions [circuit court] in each district [county] shall have power to issue their process for the apprehension of persons indicted before them for any criminal offence and subpœna's and other process for summoning witnesses into any [district] of this territory. *ib. p.* 86, *passed* 3*d July* 1807.

Who may take recognizances.

Sec. 29. The judges of the general [superior] court the judges of the courts of common pleas, [circuit court] and justices of the peace in their respective districts [counties] shall have full power and authority to issue processes against and to take all manner of recognizances of persons charged or committed for any offences against the laws of the United States or of this territory and to bind to the peace and good behaviour, which said recognizances shall be made to the United States, and certified to the court of Oyer and Terminer or quarter sessions of the peace [superior or circuit court] of the proper district [county] or if the offence be against the laws of the United States and cognizable only in the general [superior] court, such recognizanzes are to be certified to the general [superior] court without concealment, detaining or embezzling the same, and when any person shall forfeit his or their recognizance of peace, good behavior or appearance for any cause whatsoever the recognizance shall be sued for

Recognizances forfeited where sued on.

and judgment in the court of common pleas [circuit court] for the district [county,] or in the general [superior] court if the recognizance has been certified to that court.* *ib. p.* 85—6 *ib.*

Judge of cir. ct. to take recognizances &c.

Sec. 30. The judges of the circuit courts shall each within his circuit, have power to bail in all criminal cases except in capital cases, where the proof shall be evident or the presumption great, that may occur within the same, and in all cases where they admit a prisoner to bail for an offence that is to be tried in the superior court, they shall take his recognizance with one or more good and sufficient securities, conditioned for his appearance on the first day of the next term of the superior court, to be held for the circuit, and not to depart the same without leave. *L. M. T. Dec. sess.* 1815 *p.* 59 *pass'd* 21*st Jan.* 1816.

Prosecutor to be endorsed or indictment for trespass.

Duty of grand jury.

Duty of petit jury.

Prosecutor to pay costs in certain cases.

Proviso.

Prosecutor to be witness.

All concerned to be included

Sec. 31. No bill of indictment for assault, battery, or any other trespass, shall be preferred to any grand jury,† unless a prosecutor is endorsed thereon, and if the grand jury do in any such case return the bill "not a true bill" it shall be the duty of the grand jury to decide and to cause the foreman to endorse thereon whether the district [county] or the prosecutor shall pay the costs: and where the indictment is returned by the grand jury "a true bill" and the defendant on trial is acquitted the petit jury acquitting such defendant, shall return together with their verdict, whether the district [county] or the prosecutor shall pay the costs. In all cases where the grand jury or the petit jury shall award as aforesaid that the prosecutor pay the costs, the court shall enter a judgment for such costs against the prosecutor, and award execution for the same as is done in civil cases. *Provided,* That in all cases where the grand jury has returned the indictment a true bill and the defendant or defendants, on his or their trial is or are acquitted, the defendant or defendants shall not be allowed compensation for the attendance of his or their witnesses. *Provided,* That nothing in this section contained shall disable the prosecutor to be a witness either before the grand jury or at the trial of the defendant or defendants, but such prosecutor shall be competent to give testimony as to the facts charged in the indictment; and in all cases where two or more persons have committed indictable offence the names of all concerned shall be contained in one bill of indictment, for which no more costs shall be allowed than if the name of one person only was contained therein. *L. L. T. pt.* 1 *p.* 198—9 *pass'd 7th July,* 1807.

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* *See also Fines and Forfeitures.*

† *Except in certain cases. See post sec.* 32.

In one indictment.

Sec. 32. In all cases of indictments or presentments for assault and battery or other trespass where the indictment or presentment shall be made from the knowledge of two or more of the grand jury or upon the information of any public officer in the necessary discharge of his duty, or on the information of any other person other than he, she or they against whom the trespass is alleged to have been committed, it should be so stated at the end of the indictment or presentment, and no prosecutor shall be required. *L. M. T. Dec. sess.* 1815 *p.* 116—17 *pass'd Jan. 24th* 1816.

No prosecutor required to be indorsed in certain cases.

Sec. 33. If at any time a party receiving a wound or other injury in one district [county,] shall die of the same wound or injury in another district [county,] it shall be lawful to prosecute the offender in either of those districts [counties.] *L. L. T. pt.* 1 *p.* 323 *pass'd 4th Nov.* 1808.

Trial in what county.

Sec. 34. In all cases punishable with death the trial shall be had in the county where the offence shall have been committed, unless the offence shall have been committed on a county line, then, and in that case, in either county divided by such line. *L. M. T. Dec. sess.* 1813 *p.* 105 *pass'd Jan. 19th, in force 1st June* 1814.

In capital cases.

Sec. 35. Any person who shall be accused and indicted of any capital offence shall have a copy of the indictment, and a list of the jury two entire days at least before the trial, and every person so accused and indicted for any of the crimes aforesaid shall also be allowed and admitted to make his full defence by counsel learned in the law; and the court before whom such person shall be tried, or some judge thereof, shall and they are hereby authorised and required immediately upon his request, to assign to such person such counsel not exceeding two, as such person shall desire, to whom such counsel shall have free excess at all seasonable hours. And every such person or persons accused or indicted of the crimes aforesaid, shall be allowed and admitted in his said defence to make any proof that he or they can produce, by lawful witness or witnesses, and shall have the like process of the court where he or she shall be tried, to compel his or

Accused in certain cases to have list of jury.

And council assigned him.

And process for witnesses.

their witnesses to appear at his or their trial as is usually granted to compel witnesses to appear on the prosecution against them. *L. L. T pt.* 1 *p.* 324—5, *pass'd 4th Nov.* 1808.

Prosecutor a competent witness.

Sec. 36. The competency of a witness shall not be questioned because he may receive restitution for an injury done him by the conviction of the party charged. *ib. p.* 322—3 *ib.*

Prosecution not to have restitution &c. in certain cases.

Sec. 37. In all cases where the party from whom property is stolen, and who is by law entitled to the whole or a part of the fine or penalty imposed, or to restitution, shall be a witness on the trial of such indictment, the whole of such fine or penalty shall go to the territory, so that the party injured shall receive no benefit from such conviction: *Provided always,* That the party injured may have his remedy by action at law against such offender for such property, or for the injury sustained, any law to the contrary notwithstanding. *L. M. T. Dec. sess.* 1816 *p.* 123 *pass'd* 1st *Feb. in force* 1st *May* 1817.

Prisoner standing mute or challenging more than 20 jurors.

Sec. 38. If any person or persons be indicted of the offences herein before set forth for which the punishment is declared to be death, if he or they shall stand *mute* or will not answer to the indictment or shall challenge peremptorily above the number of twenty persons of the jury, the court in any of the cases aforesaid, shall notwithstanding proceed to trial of the person or persons so standing mute or challenging, as if he or they had pleaded not guity, and render judgment accordingly. *L. L. T. pt.* 1 *p.* 324-5 *pass'd 4th Nov.* 1808.

BENEFIT OF CLERGY.

Benefit of clergy.

Sec. 39. The benefit of clergy shall not be used or allowed upon conviction of any crime, for which by the statute of the territory, the punishment is or shall be declared to be death. *L. L. T. pt.* 1 *p.* 325 *pass'd 4th Nov.* 1808.

EXECUTION.

Sentence of death how executed.

Sec. 40. The manner of inflicting the punishment of death shall be by hanging the person convicted by the neck until dead. All of which punishments shall be executed in not less than twenty days nor more than thirty days from the time sentence is pronounced. *ib. p.* 326 *ib.*

When.

Sheriff to take oath.

Sec. 41. When any person or persons who shall be convicted of any offence against any of the provisions in certain cases.

of this act* and sentenced to receive any number of stripes or lashes, the court passing such sentence is hereby required, immediately, on passing the said sentence, or as soon thereafter as may be to administer to the sheriff on (an) oath that the number of lashes which the offender shall have been sentenced to receive will by him be openly and publicly and well and truly laid on such offenders bare back, and that without any favor or affection. *L. M. T. Dec. sess.* 1815, *p.* 118, *pass'd 24th Jan.* 1816.

Convicts to be imprisoned until, &c.

Sec. 42. In all cases of conviction under this act the party convict shall remain in confinement until all the costs attending his prosecution are paid and his sentence is fully complied with. *And the jury in such case may ascertain the amount of private damages, which the injured party shall receive of the party convicted for which execution shall issue in favor of the party injured as in civil cases.*† *L. L. T. pt.* 1, *p.* 322, *pass'd 4th Nov.* 1808.

Prisoners may be compelled to labor &c.

Sec. 43. In all cases of imprisonment for offences under this act, it shall and may be lawful for the keeper of every prison, to compel the prisoner to labor at some useful employment within the prison, under such directions and regulations as may from time to time be given by the respective courts of common pleas, [circuit courts] within their districts [counties.] *ib. p.* 323 *ib.*

Property of offender bound from arrest.

Sec. 44. The property real and personal of every person charged under this act shall be bound from the time of his arrest at least so far as will be sufficient to pay to the extent of his condemnation. *ib. p.* 322 *ib.*

Execution to issue for fines.

Sec. 45. It shall be the duty of the clerk of each court at the end of each term to issue an execution and deliver the same to the sheriff of the district [county,] where the court is held commanding him to collect each and every fine imposed during the term, as in case of execution on civil process. And it shall be the duty of the sheriff to pay over such fines according to the directions of the sentence pronounced. *ib. pages* 323—4 *ib.*

Convict may be sold in certain cases.

Sec. 46. In case any person or persons convicted under any of the foregoing provisions‡ of this act shall not discharge and satisfy the fine imposed by the sentence of the court, it shall be lawful for the sheriff by direction of the court to bind such persons to labor, for any term not exceeding seven years, to any suitable person who will discharge such fine and pay the costs of prosecution. And it shall be lawful for any person to whom such convict shall be so bound to secure him without cruelty by a chain or block or otherwise to prevent his escape. *L. M. T. Dec. sess.* 1815, *p.* 115, *pass'd 24th Jan.* 1816.

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* *Larceny, Forging & Counterfeiting. Horse stealing.*

† *So much of this section as enables a jury in all cases of conviction under this act to ascertain the amount of private damages, which the injured party shall receive of the party convicted, was repealed by an act passed 18th August* 1813 *see July sess.* 1813, *p.* 42 *which was itself repealed by an act passed 24 Jan.* 1816. *See Dec. sess.* 1815 *p.* 118.

‡ *Larceny—Horse stealing and Forging and Counterfeiting.*

Fines appropriated.

Sec. 47. All fines not herein otherwise appropriated accruing under this act shall be for the use of the district [county] in which the offender shall be tried. *L. L. T. pt.* 1, *p.* 326, *pass'd 4th Nov.* 1808.

Conviction not to work corruption of blood &c.

Sec. 48. No conviction or judgment for any of the offences aforesaid shall work corruption of blood or any forfeiture of estate. *ib. ib. ib.*

Certain cases in which this act shall not extend to slaves.

To extend to crimes committed beyond settlements.

When tried.

Sec. 49. The operations of this act* shall extend only to free persons, but every slave committing any offence specified in this act, shall be punished at the discretion of the court, except in cases of murder and arson for which offences the slave shall suffer death upon conviction by a jury. And in case of rape the slave shall suffer the same punishment as a free person. This act shall also extend to all crimes committed by any free persons (excepting Indians) or any other free persons beyond the limits of any settlement within this territory. And the offender shall be apprehended or brought to the more convenient district [county] and prosecuted according to law. *ib. p.* 323, *ib.*

A slave convicted & ordered to make restitution.

Fines how to be collected & restitution enforced.

Sec. 50. Whenever any slave or slaves shall be convicted of any offence other than capital, under the laws of this territory and a part of the punishment for such offence shall be restitution, the master of such slave shall be holden to make restitution to the party injured for single damages only, and in case of theft, if the thing stolen be not returned the master shall make restitution to the full amount of the thing stolen, and if the master of any slave offending as aforesaid, shall neglect or refuse to make restitution to the party injured, together with costs of suit, it shall be the duty of the court before whom trial is had, to order the sheriff of the county within thirty days, to sell such slave at

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† *See* 1-2-3-5-6-7-11-12 & 14, *to* 27 *inclusive.*

public auction, on a credit of twelve months, the sheriff taking bond with sufficient security from the purchaser, or purchasers for the payment of the purchase money with interest, which bond shall be recoverable by motion in a summary way, before any court of record proper to try the same: *Provided,* The party to be motioned against shall have fifteen days notice of such motion previously served on him or left at his last and usual place of residence, and after paying all costs, and the restitution money shall pay the overplus if any to the owner of such slave; and the sheriff shall give twenty days public notice at least of the time and place of such sale: *Provided,* That in all cases of conviction of a slave, if any offence against the laws of this territory no part of the punishment of such slave shall be fine or imprisonment, but the court before whom the conviction is had, may punish such slave with stripes at their discretion. *L. M. T. Dec. sess.* 1815 *p.* 115--16, *pass'd 24th Jan.* 1816.

Proviso.

Limitation of prosecutions in capital cases.

Sec. 51. No person or persons shall be prosecuted tried or punished for any of the capital offences aforesaid, wilful murder or forgery excepted unless the indictment for the same shall be found by a grand jury within three years next after the capital offence aforesaid shall be done or committed. Nor shall any person be prosecuted, tried, or punished for any offence not capital, nor for any fine or forfeiture under any penal statute, unless the indictment or information for the same shall be found or instituted within two years from the time of committing the offence, or incurring the fine or forfeiture aforesaid: *Provided,* That nothing herein contained shall extend to any person or persons fleeing from justice. *L. L. T. pt.* 1, *p.* 325, *pass'd 4th Nov.* 1808. *L. L. T. pt.* 1, *p.* 60.

Other cases.

Proviso.

Governor may offer a reward for apprehending fugitives from justice in certain cases.

Sec. 52. If any person charged with or convicted of treason against the United States, murder or other capital crimes, shall break prison, escape or flee from justice, and abscond and secret himself, in such cases it shall be lawful for the governor, if he shall judge it necessary, to offer any reward not exceeding three hundred dollars for apprehending and delivering such person into the custody of such sheriff or other officer as he may direct, and the person or person so apprehending and delivering any such person as aforesaid and producing to the governor the sheriffs or jailors receipt for the body, it shall be lawful for the governor to issue his warrant on the territorial treasury for the payment thereof. *L. L. T. pt.* 1, *p.* 60-1, *pass'd 25th June*, 1807.

DEEDS.

See Conveyances.

DEFALCATION.

Offset may be plead in certain cases.

Sec. 1. If two or more, dealing together be indebted to each other upon bonds, bills, bargains, promises, accounts, or the like, and one of them commence an action in any court; if the defendant cannot gainsay the deed, bargain, or assumption upon which he is sued, it shall be lawful for such defendant, to plead payment of all, or part of the debt or sum demanded; and give any bond, bill, receipt, account or bargain in evidence, and if it shall appear, that the defendant hath fully paid or satisfied the debt or sum demanded the jury shall find for the defendant, and judgment shall be entered, that the plaintiff shall take nothing by his writ, and shall pay the costs. And if it shall appear, that any part of the sum demanded be paid, then so much as is found to be paid shall be defalked; and the plaintiff shall have judgment for the residue, only, with costs of suit. But if it shall appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal certify to the court how much they find the plaintiff to be indebted, or in arrear to the defendant more than will answer the debt or sum demanded; and the sum or sums so certified shall be recorded with the verdict, and shall be deemed as a debt of record; and if the plaintiff refuse to pay the same the defendant for recovery thereof, shall have a *scire facias* against the plaintiff in the said action, and have execution for the same, with the costs of that action. *L. L. T. pt.* 1, *p.* 27, *pass'd* 1*st Oct.* 1804.

Mode of proceeding.

Tender & refusal, to discharge defendant of costs, &c.

Sec. 2. In all actions where a tender shall be made and full payment be offered by discount or otherwise, in such specie as the party, by contract or agreement, ought to do, and the party to whom such tender shall be made, doth refuse the same, and yet afterwards will sue for the debt or the goods so tendered, the plaintiff shall not recover any costs in such suit. *ib. p.* 28, *ib.*

Sec. 3. In all cases where the plaintiff and defendant having accounts to produce one against another, shall by themselves or attornies or agents, consent to a rule of court for referring the adjustment thereof to certain persons mutually chosen by them in open court,* (the award or report of such referees being made according to the submission of the parties, approved of by the court, and entered upon the record or roll) shall have the same effect, and be deemed and taken to be as available in law, as a verdict given by twelve men; and the party to whom any sum or sums of money are hereby awarded to be paid, shall have judgment, or a *scire facias* for the recovery thereof as the case may require and as is herein before directed concerning sums found and settled by a jury, any law or usage to the contrary in any wise notwithstanding. *ib. ib. ib.*

Certain matters may be submitted to arbitration, proceedings thereon.

DEPOSITIONS.

Sec. 1. It shall be the the duty of every justice of the peace or judge of any court of record within this territory, before whom a deposition in writing is taken, to cause the witness making such deposition, oath or affirmation to subscribe his or her name thereto in presence of such judge or justice or in case he or she cannot write his or her name, to cause him or her to set his or her mark thereto and for the judge or justice to certify that such deposition has been sworn or affirmed to and subscribed in his presence. *L. L. T. pt.* 1, *p.* 193, *pass'd 7th July, in force,* 1*st Sep.* 1807.

Manner of taking and certifying depositions.

DESCENTS AND DISTRIBUTION.

Sec. 1. The remaining part of any lands tenements and hereditaments and slaves and personal estate, *after the widows right of dower as herein before provided*† and after the payment of all just debts, whereof any person died seized and possessed, not sold and disposed of by will, or otherwise limited by marriage settlement shall be divided and enjoyed in manner following to wit:

Descent and distribution of intestates estate.

1. *If the intestate leaves a widow and lawful issue, the widow to be entitled as her dower, to one third part of such lands and tenements of which the husband was seized and possessed during coverture*† either by virtue of a deed,

If there be a widow and issue. Dower in lands.

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* *The superior court may appoint auditors. See Chancery proceedings, Sec.* 11.

† *See post sec.* 4.

patent, entry, warrant or survey and to which she has not relinquished her right of dower, except lands sold on execution or where lands have been mortgaged and sold in pursuance of the decree of a court of justice.

Of slaves.

And such widow shall also be entitled to one third part of the slaves whereof the husband died seized or possessed, for and during her natural life;* and at her death the said real estate and the said slaves and their increase shall descend and be disposed of as in this act is provided with respect to the whole estate in case the intestate leaves no widow;† and also to one third part of the personal estate absolutely.

Of personal estate.

And the remaining two thirds of the estate real and personal, shall immediately descend and be distributed among the lawful children of the intestate; such children always to inherit and enjoy as tenants in common in equal parts;

Residue lineal heirs of equal degree equally.

and in case the person dying intestate shall leave several persons lawful issue in the direct line of lineal descent, and all of equal degree of consanguinity to the person dying intestate the said two thirds of said estate, shall descend and be distributed to the several persons as tenants in common in equal parts, however remote from the intestate the common degree of consanguinity may be, in the same manner as if they were all children of the intestate.

Of different degrees.

And in case the intestate shall leave lawful issue if different degrees of consanguinity to him or her, the said two thirds of the said estate shall descend and the personal estate be distributed to the lawful child or children of the intestate, if either or any of them be then living, and unto the lawful issue of such of the children that shall be then dead leaving lawful issue as tenants in common: such issue always to inherit, if one person solely, and if several persons in equal parts, such shares only as would have descended to his, her, or their parent, if such parent had been then living.

Per stirpes

And each of the lawful children of the intestate to inherit and receive such share as would have descended or been distributed to him or her if all the children of the intestate who shall be then dead, leaving lawful issue, had been living at the death of the intestate.

And so on in the remotest degree.

And if there be no child of the intestate living at the death of the intestate and only a grand child or grand children, and the lawful issue of a grand child or grand children who shall be then dead leaving lawful issue. Then the real estate shall descend and the personal estate be distributed to such grand child or grand children of the intestate, and to the lawful issue of such of the grand children of the intestate as shall be then dead leaving issue as tenants in common. Such issue always to inherit, if one person solely, and if several persons, as tenants in common in equal parts, such share or shares only as would have descended to his, her or their parent, if such parent had been then living. And each of the grand children so dying intestate, who shall be in being at the time of the death of the intestate always to inherit and receive such share as would have descended or have been distributed to him or her if all the grand children of the intestate who shall be then dead leaving lawful issue, had been living at the time of the death of the intestate. And the same law of inheritence, descent and distribution shall be observed in case of the death of the grand children and the descendants of the remotest degree. *L. M. T. Dec. sess.* 1814, *p.* 118--19 20--21. *pass'd 21st of Jan.* 1815.

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* *See also post sec.* 4.

† *See post sec.* 2.

Where there is no widow

Sec. 2 In case the intestate leaves no widow, the whole real and personal estate shall descend, and be divided, as is directed in the preceding section with respect to the estate not disposed of in favor of the widow.* *ib. p.* 121 *ib.*

Where there is no issue. Widows dower in lands.

Sec. 3. *And if the intestate shall leave a widow and no lawful issue, the said widow shall have in fee simple to her, her heirs and assigns forever, the one half of all such lands and tenements of which her husband was seized and possessed during coverture,*† either by virtue of a deed, patent, entry, warrant or order of survey, to which she had not relinquished her right of dower, except such lands and tenements as shall have been sold by virtue of an execution, or shall have been mortgaged and sold by virtue of a decree of a court of justice; *and the said widow shall also have to her, her heirs and assigns forever the one half of all the slaves whereof the intestate died possessed;*‡ *except in cases where the slaves all come by or on the part of the said widow, in which case she shall have the whole of the slaves that come to the said estate by or through her, with their increase, and the one half of all the other slaves (if any) whereof the intestate died possessed. And the said widow shall moreover have*

Of slaves

Of slaves coming through her.

Personal estate.

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* *Ante sec.* 1.

† *Changed—See post sec.* 4.

‡ *Changed—See post sec.* 4.

*to her, her heirs and assigns the whole of the other personal estate whereof the said intestate died possessed after the the just debts be paid there out.** And the remaining part of the lands, tenements and slaves not herein disposed of shall descend and be enjoyed as is directed by this act with respect to the whole estate, in case the intestate leaves no widow. *ib. p.* 121—2 *ib.*

Residue.

Sec. 4. The estates of persons dying intestate in this territory shall descend and be distributed in the manner following, viz. if the intestate shall leave a widow and child or children the dower of such widow shall be one third part of said estate, after all just demands against the said estate are paid in the way prescribed in the act to which this is an amendment† with such other and further provisions as is [are] hereafter provided by this act,‡ and the remaining two thirds to descend and be distributed to the said child or children, as is hereafter provided by law;§ and any person dying intestate, leaving a widow and no lawful issue, said widow shall be entitled as her dower, to one equal half of the estate of which the said husband died siezed and possessed after his just debts are paid as aforesaid, the personal estate absolutely, and the lands and slaves, if any, for and during her natural life; and when such intestate shall have no child or children, the personal estate, negroes and real estate, which came to the said husband by the said wife, shall become the property of the said widow absolutely, and the real estate and negroes which did not come to the said husband in right of his said wife shall, on the death of said widow, descend to the father of the said husband, so as aforesaid deceased, if any, and if there is no father living then to descend to the next nearest of kin as is directed by the act to which this is an amendment.¶ *ib. Dec. sess.* 1816 *p. 47, pass'd 25th Jan. in force* 1*st April* 1817.

Widows dower if issue

If no issue.

Property which came by the wife.

Sec. 5. When any person shall die in this territory, whether testator or intestate, and shall not have sufficient goods, chattels, rights, credits, effects, lands and tenements from the sales and products of which his funeral charges, allowances of household furniture and provisions for the wife as herein before provided, be-

No dower in case of insolvency.

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* *See past sec.* 4

† *Ante sec.* 1.

‡ *See Administration, sec.* 31 *to* 35.

§ *Ante sec.* 1.

¶ *See post sec* 7.

ing always paid first and excepted, and where there is not more than a sufficiency to pay and discharge his just debts, the widow shall not be entitled to any dower in the lands and tenements, or real estate of her husband; but said widow shall be entitled to tarry in the mansion house of her deceased husband, and the plantation thereto belonging of which he died siezed and possessed, rent free, for the term of two years next ensuing the death of her said husband, and to no greater or further allowances of the personal estate than in this act is provided,* any law custom or usage to the contrary notwithstanding: *Provided always*, That the provisions of this act shall not be construed to impair the rights of persons under any contract of marriage heretofore or hereafter to be made, or the right of dower absolutely vested before the passage of this law. *id. p.* 49 *ib.*

When there i neither wid ow nor issue Fathers por tion of real estate.

Personal estate.

Sec. 6. In case any person so as aforesaid seized or possesed shall die leaving neither widow nor lawful issue, but leaving a father, the whole of the said real estate and slaves shall be enjoyed by the father of the intestate for and during the life of the said father, and the personal estate of the said intestate shall pass and be invested in the said father absolutely, unless the real and personal estate the slaves or either of them came to the person so dying, seized or possessed from the part of his mother, in which case the said estate or such part thereof as shall have come from the part of his or her mother shall descend, pass, and be enjoyed and possessed as if such person so dying seized had survived his or her father. *ib. Dec. sess.* 1814, *p.* 122, *pass'd* 21*st Jan.* 1815.

After the death of the father

Brothers and sisters & their issue.

Sec. 7. If any person so dying seized shall leave neither widow nor lawful issue but shall leave a father, brothers and sisters, the said real estate and the slaves and their increase shall descend to and be enjoyed by the brothers and sisters of the intestate, after the decease of the father, as tenants in common in equal parts, and if any of the brothers or sisters of the intestate shall be then dead leaving lawful issue then it shall descend and be enjoyed by the surviving brothers and sisters, and the lawful issue of such brothers and sisters as shall be then dead, leaving lawful issue, always to inherit if one person solely, if several persons as tenants in common, such share only as would have

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* *Title, Administration, sec.* 17—18.

If no brother or sister.

descended to his, her, or their parent, had such parent been then living. And each of the brothers or sisters of the person so dying intestate, who shall be then living at the time of the death of the intestate, always to inherit and enjoy such share as would have descended or been distributed to him or her as if all the brothers and sisters leaving lawful issue had been living at the time of the death of the intestate. But if the intestate shall leave no brother nor sister nor their legal representatives then the real estate shall go to the father in fee simple, and the slaves absolutely, unless when the estate has descended on the part of the mother as aforesaid. *ib. p.* 122—3 *ib.*

When there is no widow, issue nor father.

Mother to take, &c.

Exception.

Sec. 8. In case any person so as aforesaid seized or possessed shall die leaving no widow nor lawful issue, nor father, but leaving a mother, then the whole of the real estate and slaves shall be enjoyed by the mother of the intestate for and during the natural life of such mother: and the personal estate of the said intestate shall pass and be vested in the said mother absolutely, unless, the said real and personal estate and slaves, or either of them came to the person so dying seized or possessed thereof from the part of his or her father: in which case the said estate or such part thereof as shall have come from the part of his or her father, shall descend, pass and be enjoyed or possessed as if such person so dying seized had survived his or her mother. *ib. p.* 123 *ib.*

After mothers death.

Brothers and sisters.

Sec. 9. If the person dying seized shall leave neither widow nor lawful issue, but shall leave a mother and brothers and sisters, the said real estate and slaves together with the increase of such slaves, shall descend to and be enjoyed by the brothers and sisters of the intestate, or their representatives after the decease of the mother, as tenants in common in equal parts. And if any of the brothers and sisters of the intestate shall be then dead leaving lawful issue, then it shall descend to and be enjoyed by the surviving brothers and sisters and the lawful issue of such brothers and sisters as shall be then dead leaving lawful issue; such issue always to inherit if one person solely, if several persons, as tenants in common, in equal parts such share only as would have descended to his her or their parents, had such parents been then living. And each of the brothers and sisters of the person dying intestate always to inherit and enjoy such share as would have descended and been distributed to him or her, if all the brothers and sisters leaving lawful issue had been living at the time of the death of the intestate. And in the same manner the estate of any intestate leaving neither widow, nor lawful issue, nor father nor mother, but brothers and sisters, shall be distributed among the brothers and sisters of such intestate or their representatives. *ib. p.* 123—4 *ib.*

When there is no widow, issue, father nor mother.

Sec. 10. If any intestate shall die seized of real estate in fee simple or slaves, and shall leave no widow, nor issue, father, brother, sister or their representatives, the said estate shall go and be vested in fee simple in the mother, unless where such estate has descended from the part of the father, in which case it or such part thereof as shall have come from the part of his or her father, shall pass and be enjoyed as if such person so dying seized had survived his or her mother. *ib. p.* 126 *ib.*

If no widow, issue, father, sister nor brother.

Sec. 11. The real and personal estate, and slaves of any person dying intestate, in case such person leave neither widow, nor lineal ascendant, nor lineal descendant nor brother nor sisters, nor lawful issue of any brother or sister, shall descend to and be divided among the next of kin of equal degree: And if any such kindred shall be then dead leaving lawful issue, then it shall desend to and be enjoyed by such surviving kindred, and the lawful issue of such kindred as may be then dead leaving issue as tenants in common, such issue always to inherit if one person solely, and if several persons as tenants in common such share only as would have descended to his, her or their parents, if such parents had been then living. And each of the kindred in equal degree to the person so dying intestate who shall be living at the time of the death of the intestate always to inherit and receive such share as would have descended to him, her or them if all such kindred leaving lawful issue had been living at the time of the death of the intestate. *ib. p.* 125 *ib.*

When there is no widow nor lineal ascendant, nor lineal decendant, brother nor sister.

Sec. 12. When a woman dies leaving an husband he shall take the personal estate absolutely and the real estate shall go and descend in the same manner as is directed in the case of men dying intestate, saving to the husband his right as tenant by the courtesy. When a woman dies leaving a husband and no lawful issue, the husband shall have all the slaves and other personal estate absolutely, whether reduced to possession

When a woman dies leaving a husband and no lawful issue.

during the coverture or not. And he shall also have to himself his heirs and assigns the one half of the real estate that came by or through his deceased wife. And the residue of such estate shall go and descend in the same manner as is directed in the case of men dying intestate. *ib. p.* 125–6, *ib.*

Kindred of the half blood

Sec. 13. There shall be no distinction in the distribution of any intestates estate between kindred of the whole or half blood unless when the inheritance came to said person so seized by descent demise or gift of some one of his or her ancestors, in which case all those who are not of the blood of such ancestor, shall be excluded from such inheritence or distribution. *ib. p.* 124, *ib.*

Posthumous children.

Sec. 14. All posthumous children shall in all cases whatsoever inherit in like manner as if they were born in the life time of their respective fathers. And when

Children born before marriage.

a man shall have one or more children by a woman, and shall afterwards entermarry with such woman such child or children if recognized by him shall be thereby legitimated, and capable of inheriting. *ib. ib. ib.*

Widows dower.

Sec. 15. That part of the intestates estate in this act allowed to the widow shall be in lieu and satisfaction of the dower at common law. *ib. p.* 125, *ib.*

Settlement equal to a full share precludes child from inheritance.

Sec. 16. In case any child shall have any estate by settlement of the intestate, or shall be advanced by the intestate in his or her life time, by portion or portions equal to the share which shall be divided or allotted to the other children, or other descendants, whither the same be by lands or personal estate, such person shall have no share of the estate of which the said person died seized or possessed.

In part to be brought into hotchpot.

And in case any child shall have any estate by settlement from the intestate or shall have been advanced by the said intestate in his or her life time, whether the said portion or advancement be in real or personal property but not equal to the share which shall be due to the other children o descendents then so much of the surplusage of the sai estate of the intestate shall be distributed to such chil or children as shall make the estate of the said child o children or descendants to be equal: *Provided however* That when the persons to take shall not be of equa degree to the person dying seized or possessed, th several descendents, taking by representation, to inher it and enjoy, if one person solely if several persons a tenants in common, such share only as would have des cended or been distributed to his or her parent or ancestor, if such parent or ancestor had been then living. *ib. p.* 148--9, *ib.*

DEVISES.

See Wills & Testaments.

DIVORCE.

For what causes granted from bonds of matrimony.

Sec. 1. Where a marriage hath been heretofore or shall hereafter be contracted and celebrated between any two persons, and it shall be adjudged in the manner hereafter mentioned, that either party, at the time of the contract, was and still is, naturally impotent, or incapable of procreation, or that he or she hath knowingly entered into a second marriage, in violation of the previous vow he or she made to the former wife or husband whose marriage is still subsisting, or that either party hath committed adultery, or wilful and malicious desertion and absence without a reasonable cause for and during the term and space of four* years, in every such case it shall and may be lawful for the innocent and injured person to obtain a divorce, not only from bed and board but also from the bond of matrimony itself.† *L. L. T. pt.* 1, *p,* 52--3, *pass'd* 13*th May,* 1807.

Proceedings

Sec. 2. If any person hath or shall be injured in any of the ways above mentioned, the husband in his own proper person, or the wife by her next friend, may exhibit his or her petition or libel to the judges of the general [superior,]‡ court in term time or to any one of the same judges in the vacation at least thirty days before the next term setting forth therein the causes of his or her complaint together with an affidavit on oath or affirmation, taken before one of the judges of the said general [superior] court or before one of the judges or justices of the peace within any district [county] in this territory where he or she resides, that the facts stated in the said petition or libel are true to the best of his or her knowledge or belief and that the same complaint is not made out of levity, or by collusion, fear or restraint between the said husband and wife and for the mere purpose of being freed and seperated from each other, but in sincerity and truth for

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* *Two years. See post sec.* 8. † *See post sec.* 8.

‡ *Or circuit court, post sec.* 8.

Summons.

How served.

Jury.

the causes mentioned in the said petition or libel and thereupon a summons may and shall issue from the said court, or from one of the judges thereof, if such petition or libel is exhibited in vacation, directed to the person so complained against commanding him or her to appear at the next general [superior] court to answer the said petition or libel, and upon due proof by the sheriff of the proper district [county] at the return of the said process that a copy thereof was served personally on the said party, and the original shown to him or her or that a copy thereof was left at his or her usual place of abode at least fifteen days before the day of said return inclusive, the said court shall enquire into the circumstances of the complaint in the presence of the parties or if either of them, will not attend and does not give a reasonable excuse to the court for his or her non attendance then *exparte* by the examination of witnesses or other legal proof and the said court at the request of either party shall cause any matter of fact that is affirmed by one and denied by the other to be tried by a jury. *ib.* 53.-4, *ib.*

Alias summons to be published.

On return of alias court to proceed.

Sec. 3. If the proper sheriff shall return that the person in the said summons named is no inhabitant of his district [county] the said court shall award an *alias* summons, and order the same to be published in some newspaper printed within this territory once a week for six weeks, but if there is no newspaper printed in this territory then proclamation shall be made by the sheriff of the proper district [county] on three several days during the sitting of the court of common pleas, [circuit court] in term time, at the court house for the party to appear as commanded by the summons, and at the return of such *alias* summons, due proof being made to the court of the publication thereof as before directed, the court shall hear and determine the said complaint in the same manner as is directed by the second section of this act.* *ib. p.* 54, *ib.*

Court may dismiss petition or libel or decree a divorce.

Sec. 4. It shall be the duty of the general [superior] court† after hearing any cause commenced before them by virtue of this act, to determine the same as to law and justice shall appertain by either dismissing the petition or libel or sentencing and decreeing a divorce and seperation from the bonds of matrimony, or that the marriage is null and void agreeably to the prayer

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* *Ante sec.* 2.

† *Or Circuit court, post sec.* 9.

Costs.

Children legitimacy of not effected

thereof, and the said court may award costs to the party in whose behalf the sentence or decree shall pass or that each party shall pay his or her own costs, as to them shall appear reasonable and just: *Provided*, That such dissolution of such marriage shall in no wise affect the legitimacy of the children thereof.* *ib. page 55, ib.*

Compt. must reside one year in ty.

Sec. 5. No person shall be entitled to a divorce from the bonds of matrimony by virtue of this act who has not resided whithin this territory one whole year previous to the filing his or her petition or libel. *ib. ib ib.*

Causes of from bed & board

Sec. 6. If any person shall maliciously either abandon his family, or turn his wife out of doors, or by cruel and barbarous treatment endanger her life, or offer such indignities to her person as to render her condition intolerable and thereby force her to withdraw from his house and family, it shall and may be lawful for the general [superior] court upon complaint and due proof thereof in manner aforesaid, at the first or any subsequent term to grant the wife a divorce from bed and board. And in case the parties concerned should declare to the court that they respectively agree to be divorced from bed and board only, although the facts alledged and proven in the first section of this act,† in this case such a divorce shall be granted. *ib. p. 55-6 ib.*

Children to be provided for.

Alimony.

Marriage contracts how affected.

Sec. 7. In all cases in which the general [superior] court shall declare a divorce in pursuance of this act, the said court shall and may take such order, touching the case and maintainance of the children (if any there be) of such marriage; and also touching the maintainance of the wife, or any allowance to be made to her, and the security to be given for the same, as from the circumstances of the parties and the nature of the case may be proper and sufficient and on application of either party may from time to time make at their discretion such alterations therein as may be necessary: *Provided however*, That any order that may be thus taken by the said general [superior] court shall not in any manner whatsoever impair or affect any of the rights that may appertain or which may have accrued or shall accrue by marriage contracts, or by the laws or usages which be actually in force in this territory in regard to married persons, but on the contrary such rights shall have their full force and effect from the time of divorce granted by the said general [superior] court in the same manner as if such marriage had been dissolved by the natural death of either of the parties. Saving at the same time the case where by marriage contract any provision may have been made or shall be made in favor of either of the surviving parties in which case the said clause shall be null and of no effect from the beginning. *ib. p.* 56-7, *ib.*

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* *Sec. 9, contains similar provisions.*

† *Ante sec.* 1.

Causes of divorce.

Sec. 8. Where a marriage hath been heretofore, or shall hereafter be solemnized between any two persons, and it shall be adjudged, in the manner hereinafter mentioned, that either party, at the time of the marriage taking place, was and still is naturally impotent, or incapable of procreation, or that he or she hath knowingly entered into a second marriage, in violation of the previous vow he or she made to the former wife or husband, whose marriage is still subsisting, or that either party committed adultery, or wilfully deserts and absents him or herself without a reasonable cause for the space of two years, in every such case it shall and may be lawful for the innocent and injured person to obtain a divorce not only from bed and board but also from the bond of matrimony itself, by making application to a judge of the superior or circuit court either in term time or in vocation. *L. M. T. Dec. sess.* 1816 *p.* 80 *pass'd* 29 *Jan.* 1817.

To whom to apply.

Power of court.

Sec. 9. It shall be lawful for the superior or circuit court, after hearing any cause commenced before them by virtue of the act to which this is a supplement,* to determine the same, as to law and justice shall appertain, by either dismissing the petition or libel, or sentencing and decreeing a divorce and separation from the bonds of matrimony, or that the marriage is null and void agreeably to the prayer thereof, and said court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to them shall appear reasonable and just: *Provided*, That such dissolution shall in no wise affect the legitimacy of the children thereof. *ib. p.* 81 *ib.*

Proviso.

DOWER.

Devises to widow con-

Sec. 1. If any testator shall devise or bequeath to his wife any portion of his estate, such devise or besidered in lieu of dower.

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* *Ante sec.* 1 *to* 7 *inclusive.*

quest shall be deemed, and be taken in lieu and bar of dower out of the estate of her deceased husband;[*] in like manner as if the same were expressed; unless such testator shall by his last will and testament declare otherwise. *Provided*, That nothing in this section contained shall deprive the widow of her choice, either to dower of the estate or to the part or portion so denied or bequeathed to her; and it shall and may be lawful for any such widow, who will make choice of her dower within one year from time of the death of the testator before the [circuit] court, or by deed executed and acknowledged before any justice of the peace of the county, and filed and entered on the clerks office of said court to declare that she will not accept the provisions made for her by said will, or any part thereof; and renounce all benefits which she might claim by such will; but every widow not making such declaration within the time aforesaid, shall have no more of her husband's estate than is given to her by will. *L. M. T. Dec. sess.* 1814 *p.* 148 *passed* 21*st Jan.* 1815.

Relinquishment of devise how and when made.

Rights of widow before dower assigned.

Sec. 2. Every widow after the death of her husband may tarry in the mansion place of her husband, and the plantation thereto belonging rent-free, until her dower shall be assigned to her. And whosoever shall deforce widows of their dower of lands whereof the husband died seized, or of such mansion house or plantation, shall pay damages to the widow to the value of the whole dower to them belonging from the time of the death of their husbands until the day that they shall in due course of law recover possession of such dower. *ib. p.* 157—8 *ib.*

Deforcement.

Widow claiming dower to file her petition, &c.

Sec. 3. Any widow claiming dower in lands or slaves, may present her petition stating the circumstances of the case to the judge of the circuit court of the county where such lands lie, or in which the slaves may be found, of which she claims dower in term time; or file her petition in vocation in the clerk's office, whereupon it shall be the duty of the said court, to order or of the clerk in vacation to issue, a summons endorsed on said petition directed to the person or persons against whom she complains commanding such person or persons, to appear at the next term of said court, to answer the complaint of such widow, which petition and summons shall be served at least ten days before

Summons to issue how.

[†] *What allowed to widow as dower, see Descent and Distribution sections*
* 1 2 3 4 & 5.

the time appointed therein for the defendant or defendants to appear. *ib. p.* 158 *ib.*

Proceeding on petition for dower.

Sec. 4. The court to whom any such petition is presented may after the service and return of the summons aforesaid compel the defendant or defendants to answer, and may proceed upon such petition and answer although any of the defendants may be under the age of twenty one years according to the course and rules of equity: and shall make such decree for the assignment of dower in such manner as shall be most agreeable to equity: and such assignment of dower shall be as effectual as if the same were in the ordinary method of the common law. And it shall further be the duty of such court on decreeing an assignment of dower, to appoint three respectable inhabitants of the county where such lands may lie, whose duty it shall be to proceed to the premises and by actual survey and admeasurement to lay off and ascertain the boundary lines of such dower lands in pursuance of the sentence and order of said court; and make return of their proceedings to the next circuit court to be holden for such county. And if such return is confirmed by the court, it shall be the duty of the court to cause such return and proceedings to be entered of record. And if any of the persons appointed as aforesaid shall fail to take upon themselves the execution of said appointment, it shall be the duty of the court from time to time to appoint others till such duty be completed. *ib. p.* 158—9 *ib.*

Decree

Assignment of dower, how to be made.

Jury in certain cases.

Sec. 5. And if any material facts are asserted by one party and denied by the other, the court shall at the request of either party cause such facts to be tried by a jury. And an appeal from the final judgment or decision of the court in any case respecting dower may be had to the superior court of the proper county, as in other cases. *ib. ib.*

Appeal.

Relinquishment of, how made.

Sec. 6. It shall and may be lawful for any married woman to release her right of dower of, in, and to any lands and tenements whereof the husband of such widow may be possessed or seized by any legal or equitable title during coverture, by joining such husband in the deed or conveyance whereby such land or tenements are granted or conveyed, and appearing before any judge of the superior court, or circuit court of this territory, or before any justice of the peace in the county where such lands and tenements lie:* and it shall be the duty of the judge or justice to acquaint such woman, with the contents of such deed or other conveyance and to examine her apart from her husband, whether she executed such deed or conveyance voluntarily and without compulsion or undue influence of her husband; and to endorse a certificate of such examination as aforesaid made, on the deed or conveyance; and every deed executed, and certified by such judge or justice, that such woman executed the same voluntarily, and without undue influence of her husband, and recorded according to law shall be sufficient to discharge and bar the claims of such woman from any claim to dower in such lands and tenements conveyed by such deed or conveyance. *ib. p.* 157 *ib.*

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* *Clerks of circuit courts have the same power in taking acknowledgments, as Judges, &c. See title Conveyances, sec. 2, and following*

Removal of laves held in dower not permitted unless, &c.

Sec. 7. If any widow possessed of a slave or slaves as of the dower of her husband shall, remove, or voluntarily permit to be removed out of this territory such slave or slaves or any of their increase, without the consent of him her or them in reversion, such widow shall forfeit all and every such slave or slaves which she holds of the endowment of her husband unless by consent of the person or persons that shall by law be entitled to the reversion thereof. *Provided nevertheless*, That if the consent of those in reversion cannot be had, it shall and may be lawful for said widow to take the slave or slaves so in her possession, of the endowment of her husband to the circuit court of the proper county and there have their names, ages and description recorded: And further if the said widow will then and there give good and sufficient security to be approved of by the court, in double the value of the slaves so to be removed, conditioned, that the same slaves shall not be wasted, but shall be forthcoming to him, her or them in reversion, after the death of said widow in case the slaves out-live her or such part thereof with their additional increase; then in that case it shall and may be lawful for said widow to remove or permit to be removed said slave or slaves, any dissent of those in reversion to the contrary notwithstanding. But the consent of those in reversion shall supersede the necessity of such security. *ib.p.* 159—160 *ib.*

Proviso.

Security

Husband holding slaves in right of his wifes dower cannot remove them, &c.

Sec. 8. If any widow possessed as aforesaid shall marry to a husband who shall remove, or voluntarily permits to be removed out of this territory any such slave or slaves or any of their increase without the consent of him her or them in reversion; in such case unless by consent. it shall and may be lawful for the person in reversion to take and possess the same slaves which he holdeth in right of his wife's dower for and during the life of said husband : *Provided,* That if the husband will have a description of the slaves, and their increase then in being, recorded, and give security as herein before provided to be given by the widow removing said slaves, that then he may remove the same as in the case of the widow removing the same. But the consent of those in reversion shall supersede the necessity of giving such security. *ib. p.* 160—1 *ib.*

Proviso.

DUELLING.

See Vice and Immorality, sec. 7—8.

EJECTMENT.

Proceedings in actions of regulated.

Sec. 1. In all actions of *ejectment* the plaintiff shall declare in his proper name and instead of the fititious suggestion of *lease entry* and *ouster* shall state that he is legally entitled to the premises and aver the *ejectment* and trespass of the defendant, and the defendant may in his defence plead not guilty or plead his title according to truth. The parties having the same right of pleading joining issue and *demurring* as in other cases. The declaration shall be served in the same manner as is provided in the twenty-first section of this act.* The *ejectment* shall be put on the docket like other causes, but the person through whom the possessor of the premises claims title may on motion be admitted defendant.† *L. L. T. pt.* 1, *p.* 121, *pass'd 3d July, in force 1st Sept.* 1807.

ELECTIONS.

When to be held.

Sec. 1. All general elections hereafter to be held for representatives to the General Assembly and for delegate to congress shall be held on the first monday in August eighteen hundred and fourteen and on the first Monday of August every second year thereafter, and be conducted in the manner hereinafter prescribed by this act. *L. M. T. Dec. sess.* 1813, *p.* 16--17, *pass'd 4th Jan.* 1814.

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* *Judicial Proceedings, sec.* 18.

† *On what title an action of ejectment may be supported. See Improvement & Titles, sec.* 3, *by which damages are also regulated.*

Sec. 2. Each township now or hereafter to be laid off in the several counties within this territory shall compose an election district, and the courts of common pleas [circuit courts] in their respective counties are hereby authorised and required at their term next preceding the day of election, to name a certain house in each township as nearly central to the inhabitants as circumstances and convenience will admit of, at which the electors shall meet when and as often as they may be required to vote for the officers hereby authorised to be elected: *Provided,* That all elections held in the townships in which the seats of justice are established shall be held at the court house in said township. *ib. p.* 17, *ib.*

Townships to be election districts.

Place of holding election to be appointed by C. court.

Proviso.

Sec. 3. The judges of the several courts of common pleas [circuit courts] within this territory shall at their term next preceding the election appoint three discreet house-holders in each township within their respective counties, having the qualifications of electors to act as judges of the elections within their townships and the judges thus appointed shall choose two persons having the like qualifications to act as clerks thereof; and the said judges so appointed shall be and continue judges of all elections to be holden within their respective townships until others shall be appointed as herein before directed. *ib. p.* 18, *ib.*

Judges of election how appointed.

Clerks.

Sec. 4. It shall be the duty of the sheriff or coroner (if there be no sheriff) of each county and he is hereby authorised and required fifteen days at least before the holding of any general election, or ten days at least before the holding of any special election to give public notice by proclamation throughout the county of the time and several places of holding such elections, and the number of officers at that time to be chosen, a copy of which shall be set up at each of the places where the elections are appointed to be holden and at two others or more of the most public places in each township. *ib. p.* 18, *ib.*

Shff. to publish notices o times & places

Sec. 5. If any person appointed to act as judge as aforesaid shall neglect or refuse to be sworn or affirmed to act in such capacity the place of such person shall be filled by any one of the justices of the peace of the township where such vacancy may happen. And if there is no justice present to act as judge, the vacancy shall be filled by nomination made by the other judge or judges of election. And if there is no judge or judges to fill

Vacancies of Judges.

the vacancy by nomination as aforesaid then such vacancy shall be filled by the votes of such qualified electors as may be then present and the justice or justices person or persons so nominated or elected to fill such vacancy shall and are hereby vested with the same powers as if appointed by the judges of the court as aforesaid. And if any clerk as aforesaid shall neglect or refuse to act or to be sworn or affirmed in such capacity, the place of such clerk shall be filled in the manner prescribed in the preceding section.* *ib. p.* 18, *ib.*

Clerks.

Time of opening & closing polls.

Sec. 6. At all elections to be holden under this act the poll shall be opened at the hour of eight in the morning and close at the hour of six in the afternoon of the same day. *ib. ib. ib.*

Oath of election officers.

Sec. 7. Previous to any votes being received the judges and clerks shall severally take an oath or affirmation in the following form.

I. A. B. do solmnly swear or affirm, as the case may be, that I will perform the duties of judge of the election, (or "clerk," as the case may be,) according to law, and to the best of my abilities, and that I will studiously endeavour to prevent fraud, deceit and abuse in conducting the same. *ib. p.* 19, *ib.*

Who to administer oaths in certain cases.

Sec. 8. In case there shall be no justice of the peace or judge present at the opening of the election, or in case such justice be appointed a judge or clerk, it shall be lawful for the judges of the election and they are hereby authorised and empowered to administer the oaths or affirmations to each other and to the clerks. *ib. p.* 20. *ib.*

Certificate of oath to be prefixed to poll book.

Sec. 9. The person or persons who shall administer the said oaths or affirmations shall cause an entry thereof to be prefixed to the poll books in words to the following effect I do hereby certify that judges and clerks of the election held in the township of in the county of on the day of in the year one thousend eight hundred and were severally sworn as the law directs previously to entering on the duties of their respective offices which certificate shall be subscribed by the persons administering the said oaths or affirmations and be considered as part of the record of the elections.† *ib. p.* 19-20, *ib.*

Clerks to provide poll books.

Sec. 10. Each of the clerks shall furnish himself with a poll book which shall be headed with words im-

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* *Ante sec.* 3.

† *See post sec.* 11.

How arranged.

porting that it is a poll book of the election held in the township of in the county of on the day of in the year one thousand eight hundred and and in which book they shall write at full length the name of each and every voter at such election and in a separate column the name of each and every person whose vote shall be rejected by said judges.* *ib. p.* 20, *ib.*

Poll books furnished by clerks.

Sec. 11. At all general or special elections to be held in this territory in pursuance of the act to which this is a supplement,† the clerks of the said elections shall furnish themselves with two poll books, as near as circumstances will admit, in the following form, to wit: "A poll book of an election held in the township of in the county of , on the day of , in the year of our Lord one thousand eight hundred and ."

Names of Voters.	*Names of Voters.*	*Persons names whose votes were rejected.*

Certificate.

And at the bottom of the poll book the judges and clerks shall annex the following certificate, to wit: "At an election held in the township of in the county of , on the day of , in the year of our Lord one thousand eight hundred and , the following named persons had the number of votes annexed to their respective names for the following described offices, to wit:

Delegate to Congress,

A. B. had votes.
C. D. had votes.

Members of the legislative council,

E. F. had votes.
G. H. had votes.

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* *See sec. 11 for form.*
† *All under this head.*

MEMBERS OF THE HOUSE OF REPRESENTATIVES.
I. J. had votes.
K. L. had votes.
Certified by us

Attested
M. N. } *Clerks of the Election.*
O. P. }
A. B. }
C. D. } *Judges of the Election.*
E. F. }

Certificate of oath, &c.

And the justice or person administering the oath to the judges and clerks of the election shall make out a certificate of the same, in the form prescribed by the law to which this is a supplement,* which certificate shall be attached to and form a part of the poll book. *L. M. T. Dec. sess.* 1816, *p.* 53, *pass'd 29th Jan.* 1817.

Qualifications of electors.

Sec. 12. All free white male citizens of the United States, above the age of twenty one years, who have resided in this territory twelve months preceding any election, and who shall have paid a territorial or county tax assessed at least six months previous to said election, and who are not disqualified shall be entitled to vote for representatives to the general assembly and for delegate to congress.† *ib. Dec. sess.* 1813, *p.* 20-1 *pass'd 4th Jan.* 1814.

Electors may be sworn as to their qualifications.

Sec. 13. When objections are made to an elector, and in all other cases where the qualifications of the person to vote is a fact unknown to either of the judges they shall have power to examine such person on oath or affirmation touching his qualification as an elector, agreeable to the qualifications in the preceding section which oath or affirmation either of the judges is hereby authorised to administer. *ib. p.* 21, *ib.*

Votes to be by ballot.

Privilege.

Sec. 14. At all elections to be held in pursuance of this act the electors shall vote by *ballot*: And the judges, clerks, constables and electors shall be free from arrest in all civil matters, while going to, attending and returning home from, any election held in pursuance of this law. *ib. ib. ib.*

Where electors shall vote.

Sec. 15. No person shall, on any occasion or pretence be admitted to vote at any election for the purposes aforesaid in any township except that in which he usually resides: *Provided nevertheless,* That it shall and may be lawful for any person qualified to vote in any township or any county of the territory, of which he is not resident for a delegate to congress, or in any township, of the county of which he is resident, for a member of the house of representatives, he first making due oath or affirmation, before the judges of the election, that he has not already voted at any other place of election, or has not been refused for want of due qualifications to vote as an elector, and moreover that he will not vote at any other place for that election. And any person so offending shall be deemed guilty of perjury and shall be punished accordingly. *ib. p.* 23--4, *ib.*

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* *Ante sec.* 9.

† *Organic law, chap.* 1, *sec.* 6 *accordant.*

Arrangement of poll books.

Sec. 16. At the close of the polls the names of the electors contained upon the poll book shall be counted and set down in writing at the foot of the column in which they are entered and the number of votes received cast up and arranged and the number given to each person voted for set down in writing at the foot of the poll book and shall be signed by the judges and countersigned by the clerks and cause the same to be publicly proclaimed.* *ib. p.* 21, *ib.*

One of the poll books to be sent to clerks office, by whom.

Sec. 17. After closing the polls in manner aforesaid the judges of the election shall enclose and seal one of the poll books under cover, directed to the clerk of the county where the return is to be made and the packet thus sealed and directed shall be conveyed by one of the judges or the clerks of the election, to be determined by lots if they cannot otherwise agree to the clerk of the county at his office within ten days from the close of the polls and the other poll book shall be deposited with the remaining judge or judges of the election there to remain for the use of those who may wish to inspect the same. And if any judge or clerk of the election on whom the lot may fall to carry said poll book to the clerk shall neglect or refuse to perform such service, according to the true intent and meaning of this act, he shall be liable to the penalty of one hundred dollars to be recovered by action of debt in the name of the territory, or of any person who may sue for the same, before any court of record proper to try the same—one half of said fine shall go to the territory and the other half to the person so suing. *ib. p.* 21 —2 *ib.*

Penalty or neglect.

Polls to be compared & arranged, how & by whom.

Sec. 18. On or before the fifteenth day after the day of election or sooner, in case all the returns be made the clerk of the court of common pleas [circuit court] of the county taking to his assistance two judges of the court of common pleas or justices of the peace or one of each shall proceed to open the several returns which have been made to his office and make abstracts of the votes in the following manner: The abstracts of the votes for delegate to congress shall be on one sheet and the abstracts of the votes for representatives shall be on another sheet separate from the sheet on which the abstract of votes for delegate is contained, and being signed by the judges, or justices and clerk, or any two of them, shall be deposited in the clerk's office and a copy thereof certified under the official seal of such clerk shall be transmitted by express to the governor of the territory or to the person exercising the government thereof. And it shall be the duty of the governor or person exercising the government for the time being within thirty days, after the expiration of the time herein before allowed for making county returns, to cast up and arrange the votes from the several counties or of such of them as may have made returns, for each person voted for as a delegate to congress and shall immediately thereafter issue his proclamation declaring the person having the highest number of votes to be duly elected, as delegate to represent this territory in the house of representatives of the U. States, and to grant a certificate thereof under the seal of the territory to the person so elected.—And it shall moreover be the duty of the clerk of the county to furnish each representative with a certificate of his election under the official seal of said clerk. *ib. p. 22—3 ib.*

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* *See ante sec.* 11, *for form.*

Governor's duty.

Certificate of election.

Sec. 19. Whenever there shall be a tie, or an equal and highest number of votes for any two candidates to fill the office or place of delegate to congress, it shall be the duty of the governor to issue his proclamation ordering the different sheriffs or coroners throughout the territory to cause another election to be held conformably to the provisions of this act, to fill such place or office. And whenever there shall be a tie or an equal number of votes given for any two candidates having the highest number of votes other than those duly elected to fill the office or place of a member to the house of representatives, it shall be the duty of the clerk, judges or judge and justice casting up the number of votes or a majority of them to issue their order to the sheriff or coroner of the county where the same may occur directing him to issue his proclamation for the purpose of holding an election agreeably to the

In cases of a tie a new election to be ordered.

For a delegate.

For representatives.

provisions of this act in cases of a special election for filling such office or place. *ib. p.* 25—6 *ib.*

Vacancies how filled

Sec. 20. When any vacancy shall happen in the office of delegate to congress, or in the house of representatives by death, resignation or removal from office it shall be the duty of the governor of the territory to issue his writ or writs of election, to the sheriff or sheriffs, coroner or coroners as aforesaid of the proper county or counties, commanding him or them, on a day certain to order an election to supply such vacancy, and which said election shall be conducted in the same manner and under the same regulations as herein before prescribed for general elections. *ib. p.* 24 *ib.*

Appointment of Judges in case of special election.

Sec. 21. In all cases where a special election shall be ordered by the governor to fill a vacancy by death, resignation or removal from office, should there be no judges of election in the respective counties or townships it shall be the duty of the sheriff or coroner as aforesaid to appoint the judges of election in each township who shall perform the same duties as if they had been appointed by the courts of common pleas [circuit courts] in the case of a general election. *ib. p.* 28 *ib.*

Contested elections

Notice to be given.

Depositions how & when

Witnesses how compelled to attend.

Sec. 22. If any candidate of the proper county chooses to contest the validity of any election or the right of any person proclaimed duly elected to hold his seat in the house of representatives such person shall give notice thereof in writing to the person whose election he intends to contest or leave a written notice thereof at the house where such person last resided within twenty days after the return of the election to the clerk of the court as aforesaid expressing the points on which the same will be contested and the names of the two justices of the peace who will attend at the taking of the depositions and when and where they will attend to take the same: *Provided*, That the time fixed upon for taking such depositions shall not exceed forty days from the day of election; And the said justices or either of them shall have power, and they are hereby authorised to issue subpœnas to all persons whose testimony may be required by either of the parties commanding such persons to appear and give testimony at the time and place therein mentioned under the penalty of fifty dollars to be levied on each and every delinquent who hath been duly served with process. And the said justices when met shall hear and certify under seal all testimony relative to such contested election to the speaker of the house of representatives. No testimony shall be received by the justices on the part of the person contesting the election which does not relate to the point specified in the notice, a copy of which notice attested by the person who delivers or serves the same shall be delivered to the said justices and by them transmitted to the speaker of the house of representatives with the other documents. *ib. p.* 26-7-8 *ib.*

Testimony to be confined to points stated in notice.

Improper conduct of election officers.

Sec. 23. If any judge of any election or clerk or any other officer concerned in conducting the election shall neglect improperly delay or refuse to perform any of the duties or services required by this act having undertaken so to do or shall knowingly admit any person to vote not qualified according to law or shall be guilty of corruption partiality or manifest misbehaviour in any matter or thing appertaining to said election or shall unduly attempt to influence the election, or shall knowingly receive any improper vote or votes, or shall knowingly receive and count more than one vote from one person in the same election to one office he or they so offending shall forfeit and pay each to the territory the sum of two hundred dollars, to be recovered in any court of record in the territory, in the name and for the use of the territory in an action of debt with costs of suit; or at the suit of any person who may see proper to sue for the same, one half for the use of the person suing and the other half for the use of the territory. *ib. p.* 24—5 *ib.*

Penalty.

How recovered.

Constable to attend to preserve order, &c.

Sec. 24. For the preservation of good order as well as for the security of the election officers, from insult and personal abuse it shall and is hereby made the duty of the constable of each township to attend at all elections within their townships; and the judges are hereby authorised and empowered to impose a fine on any person or persons who shall conduct in a riotous or disorderly manner and persist in such conduct after being warned of the consequences, in any sum not exceeding twenty dollars, and on refusal to pay the same to commit to the common jail of the county for any time not exceeding twenty days or until the same be paid; and the constable to whom the order is directed, and the jailor of said county are hereby required to execute said order and receive said person or persons so committed as though it had been issued or delivered by a magistrate in due form of law. *ib. p.* 25 *ib.*

Compensation for carrying returns.

Sec. 25. There shall be allowed to each person making or carrying the returns of the polls from each township to the clerk of the court of each county the sum of five cents a mile for going and returning from the place of election to the clerk's office, where such return is to be made, which shall be in full for his trouble, and the clerk to whom the return is made shall grant to each person making a returned certificate of his services, and the distance he had to travel in making the same, which certificate shall be an evidence of debt due from the county and be drawn from the county treasury as other county debts are paid. And there shall be allowed to each person carrying the return from each county to the Governor of the territory the sum of ten cents for each mile he shall travel in going from the clerk's office of the county from which the returns are made to the office of the Governor; And the Governor of the territory for the time being shall give to each person a certificate for his services and the distance he has travelled in making said returns which said certificate shall be paid like other debts out of the territorial treasury: And the courts of common pleas [circuit courts] for each county shall moreover allow to each person who acted as clerk of the election in any township such sum as they may deem reasonable for stationary furnished by him for said election purposes. *ib. p.* 28—9 *ib.*

Allowance for stationary.

ELISORS.

To be appointed where sheriff and coroner are disqualified.

Sec. 1. In all cases where the sheriff and coroner shall both be disqualified on account of interest or prejudice, the court may direct the process in such cases to one or two proper persons of the district [county] to execute the duties and receive the legal fees of such sheriff for like services. *L. L. T. pt.* 1 *p.* 119 *pass'd 3d July, in force* 1*st Sept.* 1807.

EXECUTION.

See Judicial Proceedings, Sec. 60 *and following, and Small Debts, Sec.* 23 *and following.*

EXECUTORS.

See Administration.

Sec. 1. No officer or person shall at any time exact or demand for services hereafter to be rendered any larger fee than is hereafter provided. *L. L. T. pt.* 1, *p.* 184, *pass'd 7th July, in force* 1*st Sept.* 1807.

Sec. 2. ATTORNIES AND COUNSELLORS.

Attornies and counsellors.

1. Counsellors' and attornies' fees in the general (Superior) court and courts of common pleas—(Circuit court.)

	D.	C.
For making out a *præcipe* and filing a declaration if the suit is ended before judgment obtained - - - - -	3	00
Where judgment is obtained in addition to the last item - - -	3	00
Where a suit is removed from the court of common pleas [circuit court] to a superior court and judgment obtained in addition to the first item - -	4	00
On a writ of error prosecuted to final judgment - - - -	5	00
On a judgment upon *demurrer*, and when a *repleader* is awarded or where an interlocutory judgment is opened - -	3	00
In all *certiorari's* to remove proceedings had before justices of the peace and appeals from the same prosecuted in the courts of Common Pleas [Circuit Courts] to final judgment - - -	3	00

Provided, That only the attorney of the party in whose favor the suit is decided shall be entitled to a fee to be taxed with the bill of costs. *L. L. T. pt.* 1 *p.* 185—6 *passed 7th July, in force 1st Sept.* 1807.

As solicitors in chancery.

2. SOLICITORS' FEES.	D.	C.
For drawing a bill or answer - -	5	00
On argument or obtaining or dissolving an injunction or ne exeat,	5	00
For obtaining a decree interlocutory -	3	00
For a judgment obtained on the verdict of a jury	3	00
For a final decree - - - - -	5	00

Provided, The above fees shall only be paid to the attorney of the party succeeding in the cause. *L. M. T. Dec. sess.* 1815, *p.* 79, *pass'd* 22*d Jan.* 1816.

Sec. 3. CIRCUIT ATTORNIES.

Circuit attornies

The attorney general or his deputies [now circuit attornies] where the duty is performed by them, in the general court, and the several courts of oyer and terminer and quarter sessions, [now superior and circuit courts]

In cases not capital

	D.	C.
For every indictment returned "not a true bill" by the grand gury to be paid out of the district [county] treasury or by the prosecutor	2	00
For every indictment returned "a true bill" by the grand jury in all other criminal cases* where the defendant is acquitted, to be paid by the prosecutor, or out of the district [county] treasury - - - - -	6	00
For every indictment returned "a true bill" by the grand jury, in all other criminal cases,† where the defendant is convicted, to be paid by the defendant - - - -	8	00
For every indictment removed from the court of quarter sessions [circuit court] into a superior court, in addition to the last item -	4	00
For every information, the general [superior] court shall have power to tax the attorney general's fees, to be paid upon conviction by the defendant and upon acquittal by the district [county] or territory.		

L. L. T. pt. 1 *p.* 184—5 *pass'd 7th July, in force 1st Sept.* 1807.

Circuit attornies.

2. The Attorney General of this territory [circuit attornies] or his [their] deputies shall in lieu of the fees heretofore allowed him for similar services be entitled to receive the following to wit

In capital cases.

	D.	C.
For every indictment in all cases in the court of oyer and terminer, [superior court] returned "not a true bill," to be paid out of the district [county] - - - -	15	00
For every indictment returned "a true bill" by the grand jury in the court of oyer and terminer [superior court] to be paid out of the defendants' estate if convicted, or out of the district [county] treasury if acquitted, or defendant's estate if it be not sufficient to pay the same	30	00

ib. p. 334 *pass'd 5th Nov.* 1808.

Sec. 4. CLERKS.

Clerks.

Fees of the clerks of the general court, the clerks of

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* *i. e. In cases other than capital—the clause providing the fees in capital cases, which preceded this, has been repealed and other rgulations made in its stead.*

† *See note to this section, ante.*

Clerks,

the court of common pleas, oyer and terminer and quarter sessions [now superior and circuit courts]

For drawing sealing and entering every original and judicial writ, filing the same and docketing the return	1 00
For filing every declaration, plea, affidavit, or other paper in a cause - -	0 10
Entering every appearance - -	0 10
Entering every motion and rule - -	0 20
Swearing and entering a jury - -	0 50
Swearing each witness and constable -	0 06
Taking the verdict of a jury and entering the same on record - - -	0 25
Entering Judgment - - - - -	0 25
Entering *retraxit* discontinuance or non-suit	0 50
Copies of record for every ten words -	0 01
Entering satisfaction of record - -	0 25
Searching the record within a year - -	0 25
And for every year back - - 12 1-2 cents.	
Filing bail bond or entering special bail -	0 25
Every continuance of cause - :	0 25
Every issue joined - - - -	0 25
Attending and striking a special jury and delivering a copy thereof to each party	0 75
Every trial had before the court without a jury	0 50
Every rule of reference for trial, to shew cause, to take depositions. give security for costs,	0 25
Copy of the same if demanded without seal	0 25
Commission to take depositions - -	1 00
Copy of interrogatories annexed thereto for every ten words - - - - - -	0 01
Entering appeals from inferior courts, ejectments and amicable suits - - -	0 50
Every subpœna with four names or any less number - - - - - - -	0 50
Every indictment returned by the grand jury	0 50
Taking recognizances in criminal cases	0 25
Every submission - - -	0 25
Filing bill of exception or demurrer -	0 25
Bringing a particular record into court -	0 25
Entering report of referees - -	0 10
Surrender of principal of court in special bail	0 25
Filing jailer's receipt and entering *exoneretur*	0 25
Discharging recognizance - -	0 10
Entering a judgment, confessed and warrant of attorney - - - -	0 50

Clerks.

	D.	C.
Taking constables bond	0	50
All the services attending the licensing of a ferry and granting the certificate	1	00
All the services attending the licensing of a tavern and granting the certificate	1	00
Reading, filing and entering on record a petition for a road and recording the order of the court made thereupon, to be paid by the party applying	0	50
For a copy of the order for every ten words	0	01
For the copy of the return and plat for every ten words	0	01
Every copy of an order to open a road for every ten words	0	01
Taking and entering on record the acknowledgment of a sheriff's deed, certificate and seal	1	00
Issuing process in criminal cases	0	67
Every certificate and seal	0	50
Entering any plea in a civil or criminal case*	0	10

ib. p. 186—7—8 *passed 7th July, in force* 1st *Sept.* 1807.

Sec. 5. CLERKS OF CIRCUIT COURTS.†

Clk. of C. C. as recorder.

1. Recorder's [now clerk of C. court's fees.]

	D.	C.
For recording any deed mortgage or other instrument per sheet of one hundred words	0	15
For copies of any record the like fees		
Certificate and seal	0	20
Every search	0	20

ib. p. 195 *ib.*

Clks of C. C as of orphans courts.

2. Fees of the clerk of the orphan's [now circuit] court.

	D.	C.
For reading and filing every petition and recording the order made thereon	0	50
Copy of any record or sheet of one hundred words	0	10
Entering settlement of accounts of executors or administrators	0	75

ib. ib. ib.

Clk's of C. C. in probate business.

3. The clerks of the circuit courts, shall be entitled to receive only the following fees for doing probate business.

	D.	C.
For granting letters of administration or testamentary, drawing and taking the bonds from executors or administrators, filing the same and appointing the appraisers	2	00

**For issuing a venire for a special or grand jury 75cts. See post sec. 15.*

† *For his fees generally see ante sec.* 4.

	D. C.
Administering an oath	0 06 1-4
Copies of records, for every ten words	00 1
For a citation,	0 50
Taking and filing renunciation	0 25
Taking proof of a will	0 50
Proving a codicil if seperate from the will	0 50
Recording any last will and testament, or other paper required by law to be recorded, for every ten words	0 01
Filing a paper	0 06 1-4

L. M. T. Dec. sess. 1815, *p.* 29, *pass'd Jan.* 18, *in force* 1*st March*, 1816.

Clk's of S. C. in chancery.

Sec. 6. CLERKS OF SUPERIOR COURT* IN CHANCERY.

The clerk shall be allowed the following fees in chancery cases and no other.

For filing a bill and issuing a summons	1 00
If a separate summons	0 50
For a summons to give testimony	0 50
For copying a bill or record of court for every hundred words	0 10
For entering a motion	0 10
For entering a rule	0 10
For entering an interlocutory decree	1 00
For entering a final decree	2 00
For an execution	1 00
For an attachment	1 00
For a Dedimus	1 00
Eor a writ of ne exeat or injunction	1 50
For a rule or order of court to be served on any person with the seal of the court thereto	0 50
For swearing and impannelling a jury	0 50
Swearing a witness	0 06 1-4
For entering a verdict	0 25
Filing an answer, replication, plea or demurrer	0 20
For issuing process of sequestration	1 00
For filing every other paper in the cause	0 06 1-4

ib. p. 78–9, *pass'd* 22*d Jan.* 1816

Constable

Sec. 7. CONSTABLE.

1. From and after the passage of this act, the several constables in this territory shall be entitled to receive the following fees respectively for their services.†

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* *For his fees at law, See ante sec.* 4.

† *Vide post sec.* 17

	D.	C.
For serving a warrant in a civil or criminal case	0	50
Summoning each witness or juryman	0	12 1-2
Serving a summons	0	37 1-2
Taking a criminal or debtor to jail, each mile going and returning	0	05
Serving an execution, where goods are taken in possession or body in custody.	0	50
For every mile necessary in travelling, on executing any process civil or criminal	0	05
For removing and keeping property when seized on execution such fees as may be allowed by justice upon the statement of said constable on oath.		
Selling goods five per cent on all sums contained in every execution, chargeable to the person against whom the execution issued		
When the money is paid without sale, the one half of the above per centum		

Proviso.

Provided, That in summoning witnesses and jury no constable shall be allowed more than circular mileage to be computed from the place of service on him who lives the most remote, to the place of trial, adding thereto the extra travel, which shall be necessary to serve it on others. *ib. p.* 29–30, *pass'd* 18*th Jan. in force* 1*st March* 1816.

Sec. 8. CORONER.

1. *Coroners fees.*

Coroners

For the view of a dead body	3	00
Each juryman that sits on the inquest	0	50
Summoning and qualifying each witness	0	20
Witnesses the same allowance as in courts of record		
The fees of the coroner's inquest shall be paid out of the lands, tenements, or chattels of the slayer in case of murder or manslaughter, if he hath any, otherwise by the district [county] with mileage from the court hosue to the plece of viewing the body, each mile going and returning	0	05

Costs of inquest how to be paid

When acting as sheriff.

In all cases in which the coroner performs the duties of a sheriff he shall be entitled to the same fees as are hereby allowed the sheriff and the same mileage- *L. L. T. pt.* 1, *p.* 191–2, *pass'd* 7*th July, in force* 1*st Sept.* 1807.

Cryers.

Sec. 9. CRYERS.

1. Cryers fees in the several courts of record.

	D.	C.
For calling a jury, in each case	0	25
Calling each witness	0	06
Calling every verdict	0	10
Calling every action	0	10
Discharging every person by proclamation	0	10

ib, p. 196, *ib.*

Jurors.

Sec. 10. JURORS.

1. Jurors fees.

	D.	C.
Each juror sworn in each action*	0	25
Every juror attending a view per day	0	50

ib. p. 192, *ib*

Justices of the peace

Sec. 11. JUSTICE OF THE PEACE.

1. The several justices of the peace of this territory shall be entitled to charge, ask and receive, the following fees for their services

	D.	C.
For every warrant in a criminal case	0	50
Every recognizance	0	37 1-2
Administering an oath	0	06 1-4
Every summons or warrant in a civil case	0	25
Every subpœna not exceeding three names	0	25
Every name thereafter	0	05
Entering judgment in a civil case, where the trial is had before a jury or by the justice alone		50
For every judgment by confession, default or non suit	0	25
Every execution	0	50
Certified copies of proceedings on appeals and certiorari	0	50
Entering every rule to take depositions with a copy of the same	0	37 1-2
Recognizance of bail in civil cases	0	20
Issuing a bail piece	0	20
For granting a writ of habeas corpus, for each justice and deciding thereon	2	00
Issuing scire facias against special bail or to renew a judgment	0	50
Every venire for a jury in a civil case	0	25
Acknowledgment of a deed or power of attorney when the the same is written by the justice	0	50
If written by the party	0	25
Solemnizing matrimony	2	00

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* *If before justice of the peace 3 cents per mile for travelling. See po* *sec.* 16.

Justices of the peace.

Signing and certifying depositions if ready	0	25
If written by the justice, for every hundred words - - - - - - -	0	10
For issuing a summons or precept on forcible entry and detainer - - - -	1	00
Summoning a jury to try the forcible entry and detainer - - - - -	0	50
Every writ of restitution - - - -	1	00
Taking and entering a verdict on forcible entry and detainer - - - -	0	50
For taking an inquest on a dead body, the same fees as are, by law, allowed to coroner		
For issuing an order to view a fence -		50
For issuing a warrant to assess damages sustained by burning prairies and fences	0	50

L. M. T. Dec. sess. 1815, *p.* 27–8, *pass'd* 18*th Jan. in force* 1*st March,* 1816.

Sec. 12 NOTARIES PUBLIC

Notaries.

Notaries public's fees.

	D.	*C.*
For protest of a bill of exchange and registering seal - - - - -	1	00
Attesting letter of attorney and seal -	0	50
Notarial affidavit to an account under seal	0	50
Registering foreign bill, protested, with certificate - - - - - -	0	50
Registering protest of bill of exchange or promissory note for non acceptance or non payment - - - - - - -	0	50
Noting a bill of exchange, note or other properly protestable either for non acceptance or non payment - - - -	0	50
Drawing and certifying affidavit before a justice of the peace - - - -	1	00
Each oath or affirmation - - -	0	20
Drawing or taking acknowledgment or proof of substitution to a letter of attorney -	1	00
Being present at a demand, tender or deposit and noting the same - - - - -	1	00
Certificates of copies or papers ready made	0	50
Comparing the same for every hundred words	0	10
Taking proof of debts to be sent abroad, proof and acknowledgment of letters of attorney for receiving and transferring public securities each - - - - -	0	75

D. C.

L. L. T. pt. 1, p. 194--5, pass'd 7th July in force 1st Sep. 1807.

Sheriff.

Sec. 13. SHERIFF*

1. Sheriffs fees in the general court, courts of oyer and terminer, common pleas and quarter sessions [superior and circuit courts.]†

	D.	C.
For serving every summons, or declaration in ejectment and returning the same	0	80
If more than one defendant, for each	0	40
Serving every *capias* and taking into custody	1	00
If more than one defendant for each	0	50
Taking and returning every bail bond	0	50
Serving all writs of *scire facias* in criminal cases or attachment	1	00
Serving an execution	1	00
Summoning and returning a jury	0	75
Attending a view per day	1	50
Executing a writ of possession	2	00
Calling every action	0	10
Executing a writ of enquiry, drawing inquisition and returning the same	1	50
Every person committed to the common jail	0	50
Turnkey's fees on commitment for an offence or criminal matter to be paid on the discharge of the prisoner	0	50
Turnkey's fees to be paid on discharge of prisoner for debt above fifty dollars	0	50
If for under fifty dollars	0	33
Serving subpœna on each witness	0	33
Serving any notice or rule of court	0	33

Commission on execution.

Commission for receiving and paying money on an execution where lands or goods have been taken into custody, advertised and sold or where the defendants body has been taken for want of lands, tenements, goods and chattels, five per cent on the first three hundred dollars, and two percentum on all sums above that. And one half of such commission where the money is paid to the sheriff without seizure, or where the lands or goods seized or taken shall not be sold. And no other fee or reward shall be allowed on any execution except for the expence

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* *Vide post sec. 17.*

† *To be same in chancery as at law, post art. 9 of this sec.*

Sheriff.

	D.	C.
of keeping and removing the property taken		
For every trial in a criminal cause or confession - - - - - -	1	33
Every capital cause and *committiter* -	3	00
Executing every death warrant - -	10	00
Return of no goods or not to be found -	0	50
Travelling expences each mile going and returning upon the service of every writ to be computed from the court house of the district [county] to the dwelling house of the defendant - - - - -	0	05
Travelling expences on the service of a subpœna going and returning each mile, which is to be computed from the court house of the district [county] to the dwelling house of the witness* - - - -	0	03

Proviso in cases of mileage.

Process of S. C how to be returned in certain cases

Provided also, That for every writ, execution, or subpœna issued out of the general [superior] court, no more mileage shall be allowed, than if the writ had issued out of the court of common pleas [circuit court] of the proper district [county.] And it shall be the duty of the party on whose application such writ, execution, or subpœna has issued to cause the same to be returned to the general [superior] court without fee unless the general [superior] court shall for special reason, order the personal attendance of the sheriff, in which case he shall be allowed four cents each mile going and returning from the court house of the district [county] to the place where the general [superior] court is held.

Proviso in case of mileage.

And provided also, That if more persons than one are named in any writ or subpœna the travel shall be computed from the court house to the place of service which shall be most remote, adding thereto the extra travel which shall be necessary to serve it on the other or others. *ib. p.* 188–9–90–1, *ib.*

Allowance for keeping & removing property taken on process.

2. The several sheriffs within this territory shall be entitled to receive a reasonable compensation for the safe keeping and maintainance of any live stock, or perishable articles seized by them, under legal process, which allowance shall be adjudged and directed by the several courts of common pleas [circuit courts.] *ib. p.* 335, *pass'd 5th Nov.* 1808.

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* *On venire for special jury. [if allowed by court] Each juryman fifty cents and venire for a grand jury $5. See post sec.* 15.

3. The sheriffs fees shall be the same [in chancery] as at law, for like services. *L. M. T. Dec. sess.* 1815. *p.* 79, *pass'd* 22*d Jan.* 1816.

Witnesses.

Sec. 14. WITNESSES.

1. Witnesses fees.

	D.	C.
For attending in his own district [county] at any court of record per day	0	50
Attending from a foreign district [county] per day	0	75
The same fees are allowed a witness per day while attending, shall be paid to him for every twenty miles he is obliged to travel in going and returning from his place of abode to the place where the court is sitting.		
Attending the trial of a case before a justice of the peace*	0	25

L. L. T. pt. 1 *p.* 191, *pass'd* 7*th July, in force* 1*st Sep.* 1807.

Court not to allow any other fees to shff. or clk.

Except in certain cases.

Sec. 15. From and after the passage of this act; it shall not be lawful for any court, to allow any clerk or sheriff, any fees or compensation for services other than those expressly pointed out by law, except where the court shall award a venire for grand jurors or a special jury to come either from the county where the trial is had or from a foreign county, such court shall allow to said clerk, seventy five cents for each such venire, and to the sheriff executing the same, fifty cents, each juryman so by him summoned, together with five cents mileage, to be computed from the court house of the county of which he is sheriff, to the place of trial of the action, and the said court may moreover allow to said sheriff, the sum of five dollars for summoning a grand jury. *L. M. T. Dec. sess.* 1815, *p.* 30—1, *pass'd* 18*th Jan. in force* 1*st March,* 1816.

Mileage of jurors & witnesses before J. P.

Sec. 16. Every person who shall hereafter be summoned as a witness or a juror before a justice of the peace shall in addition to the usual fees be entitled to three cents per mile in going to the place of trial, and three cents per mile in returning from the place of trial by the nearest and most practicable rout provided such witness or juror attends at the place of trial in due time and such mileage shall be taxed like other costs. *ib. Dec. sess.* 1816, *p.* 124, *pass'd* 1 *Feb. in force* 1*st May* 1817.

Statement to be made by

Sec. 17. Each sheriff, coroner and constable, shall in sheriff, coroner and constable on the return ot process.

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* *And three cents per mile travelling.* See post sec. 16.

the return by him made on any writ, summons, execution or other process of whatever name or description, state at full length, the time when and place or name of the township where such writ, summons, execution or other process was served or executed, and any sheriff coroner or constable neglecting or refusing to comply with this requisition, shall not be entitled to demand or receive any fee for the service or execution of the same. *ib.* 1815; *p.* 30. *pass'd* 18*th Jan. in force* 1*st March,* 1816.

Clerks may issue fee bills in certain cases.

Shff to collect them.

Neglect or refusal of shff

Shff's. compansation.

Sec. 18. It shall be lawful for the clerks of the respective courts to make out once a year, fee bills in all such suits where the plaintiff has taken no steps for two courts successively to bring his suit to an end, or neglect to take out an execution for one term after judgment rendered, and to deliver such fee bill to the sheriff, to be by him demanded from the plaintiff or plaintiffs. And if such person shall neglect or refuse to pay the same, within twenty days after demand, the sheriff shall and may levy such fees on the goods and chattels of the said plaintiff or plaintiffs. And if the sheriff neglects or refuses, to pay the monies due to the clerk, within three months after any fee bill has been delivered to him the court may upon ten days notice to the sheriff, on motion give a judgment and award execution for the amount of such fee bill or fee bills, and the sheriff shall be allowed by the clerk ten percentum for collecting. *L. L. T. pt.* 1, *p.* 197, *pass'd* 7*th July in force* 1*st Sept.* 1807.

Costs to await the event of the suit in certain cases.

Sec. 19. In all cases not provided for in the preceding section, the clerks fees shall await the end of the suit, and be collected with the debt or damages, for which judgment is rendered, or an execution may issue for such costs alone including all the legal costs accrued in such suit. *ib. ib. ib.*

Fees to be entered on execution and in a book.

Which is to be evidence

Sec. 20. The clerk shall endorse on every execution the fees due to each officer distinctly, and shall at the time of issuing an execution or fee bill, or of receiving any fees due to him by any party or other person enter in a particular book the several items for which he has charged and deliver to any person from whom such fees are due on demand a copy of the entry made in said book, and whenever a suit may be instituted against any clerk for having taken illegal fees, he shall be admitted to give in evidence the book in which the entry has been made. *ib. p.* 198, *ib.*

Officers to

Sec. 21. And to the end that all persons chargeable make & sign fee bills.

with any of the fees in this act recited,* may certainly know for what the same are charged, none of the fees herein before mentioned shall be payable by any person whatsoever until there shall be produced or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same shall be respectively chargeable in which said bill or account shall be expressed in words at length, and in the same manner, as the fees aforesaid are allowed by this act, every fee for which any money is or shall be demanded. *ib. p.* 199 *ib.*

Officers to put up tables of fees.

Penalty for neglect.

Sec. 22. Every officer to whom by this act fees have been allowed shall cause to be set up in some conspicuous place in their respective offices, and there constantly kept a fair table of their fees herein before mentioned, on pain of forfeiting two dollars for every day the same shall be missing through his neglect, which penalty shall be to the use of the person or persons who shall inform or sue for the same; and shall and may be recovered in any court of record within this territory by action of debt or information. *ib. p.* 200 *ib.*

Officers charging or taking fees improperly.

Penalty.

How recovered.

Limitation.

Sec. 23. If any officer hereafter shall claim, charge, demand, exact, or take any more or greater fees, for any writing or other business, by him done within the purview of this act than herein before set down and ascertained, or if any officer whatsoever, shall charge demand or take, any of the fees herein before mentioned, where the business for which such fees are chargeable, shall not have been actually done and performed, (to be proved by the fee book of such officer upon his oath or affirmation) such officer for every such offence shall forfeit and pay to the party injured, besides such fee or fees, six dollars for every particular article, or fee, so unjustly charged, or demanded, or taken, to be recovered with costs in any court of record in this territory, by action of debt or information. *Provided,* the same be sued for within twelve months after the offence shall be committed. *ib. p.* 200 *ib.*

Fees of shff. and clk to be paid by county in certain cases.

Sec. 24. The fees for the services of the clerks and sheriffs of the several districts [counties] whether the said fees be specially ascertained by the act of this territory entitled "an act ascertaining the fees of the several officers, and persons therein named and regulating the costs on indictments'? or *whether the said fees be allowed by the respective courts in case no fees are provided by law,** are due shall be allowed and paid from the district [county] treasury of the respective districts [counties] in all cases where the defendant, or his estate or prosecutor are not made liable to the payment of costs. *ib. pt.* 2, *p.* 25 *pass'd* 30*th Oct.* 1810.

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* *All under this head and costs on indictments for Assault and Battery in certain cases, for which see crimes &c. sec. 31—32.*

FENCES.

See Inclosures.

FERRIES.

Sec. 1. No person or persons shall keep a ferry in this territory, so as to demand or receive pay, without a special license first had and obtained from the court of general quarter sessions of the peace [circuit court] of the district [county] where such ferry may be; *and the said court are hereby empowered on the payment of such sum as the said court shall deem reasonable, not less than five dollars, nor exceeding one hundred dollars,*† for the use of the district [county] to grant a license to each and every person applying, who shall be judged suitable for such service by the same court, for the term of one year from the time of giving such license, to keep a ferry at such place as the said court shall judge necessary. And the court shall state the fare or ferriage at each ferry for passengers, horses, and other creatures, carriages, waggons, carts, teams, and other things transported always having regard to the breadth and situation of the stream, and the publicity of the ferry: *And provided always,* That every person having applied for a license as aforesaid, shall before the same shall be granted, give bond with sufficient sureties to the district treasurer of the district wherein such ferry may be and to his successors in office, in such sum as the said court shall order, conditioned for the faithful performance of the duties of his place.‡ *L. L. T. pt.* 1. *p.* 34—5 *pass'd 9th July* 1806.

Not to be kept without licence.

How licensed

Ferriage how established.

Bond to be given.

Sec. 2. It shall be the duty of the court, granting licenses for keeping ferries, to compel the person obtaining the same to pay therefor, for each year, any sum

Tax on licences

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* *See ante sec.* 15.

† *See post sec.* 2.

‡ *So much of this section as is inconsistent with 2d and 4th is repealed*

not less than two dollars and not exceeding the sum of one hundred dollars and under every restriction and condition by law provided concerning the granting of licenses.* *L. M. T. Dec. sess.* 1816, *p.* 17 *pass'd* 13 *Jan. in force* 1st *March* 1817.

Boats.

Attendance.

Penalties for neglect or refusal.

Appropriated.

Private damages.

Sec. 3. All ferrymen at the several ferries in this territory shall keep a good boat, or boats, in good repair, suitable to the water they are to ferry over, and give ready and due attendance on passengers on all occasions, and shall give the like attendance when waggons, carts, horses, or other things are to be transported. *And every ferryman neglecting or refusing to give such attendance,*† shall for every such offence forfeit and pay the sum of two dollars, and for neglect in keeping such boat, or boats and in good repair as aforesaid he shall forfeit the sum of thirty dollars: One moiety of which fines shall go to him or her who shall prosecute the same to effect, and the other moiety to the use of the district [county] wherein such ferry may be, and be further liable to pay in an action of trespass on the case all such special damages as any person shall sustain by such neglect.‡ *L. L. T. pt.* 1*st, p.* 35 *pass'd* 9*th July* 1806.

Duties of ferryman in crossing persons &c.

Penalty for failure.

Sec. 4. If any person licensed to keep a ferry shall, on being tendered his lawful compensation, refuse or neglect, without a reasonable and lawful cause, to cross any person, his horses, cattle, carriage, brutes, or property in a convenient time after such application, such ferryman shall for every delay of thirty minutes forfeit and pay the sum of two dollars to the person injured, to be recovered with costs of suit before any justice of the peace within the county in which such ferry is kept. *L. M. T. Dec. sess.* 1816, *p.* 17 *pass'd* 13*th Jan. in force* 1*st March* 1817.

Rates of ferriage to be posted up.

Penalty for neglect.

Sec. 5. Each and every ferryman, so licensed as aforesaid shall keep a list of the rates of ferriage at such ferry as is established by law, written in a fair and legible hand, constantly posted up, at some public place either at the ferry or at the ferry-house, and if any such ferryman shall neglect or refuse so to do he shall forfeit and pay the sum of four dollars, for every such offence, the one moiety whereof shall go to the use of the district [county] wherein such ferry may be, and

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**Ante sec.* 1.

† *See post sec* 4.

‡ *So much of* 1 & 2 *sec. as is inconsistent with* 2 & 4 *is repealed*

the other half to him who shall prosecute for the same. *L. L. T. pt.* 1, *p.* 35—6, *pass'd* 9*th July* 1806.

Sec. 6. If any person or persons shall keep a ferry or transport passengers or any of the things mentioned, in, or coming within the purview of the first section of this act, over or across any stated ferry, so as to demand or receive pay, not having first obtained a license in the manner before pointed out, he or they shall, for every such offence, forfeit and pay the sum of ten dollars, one moiety thereof to the use of the district [county] wherein such ferry may be, and the other moiety to him or her who shall prosecute the same to effect: and be further liable in a special action on the case, to pay such damages as may or shall accrue to the person licensed and authorised to keep such ferry: All of which penalties shall be sued for before some justice of the peace of the district [county] where the offence is committed, in an action of debt or *qui tam*. *Provided*, That every offence against this law shall be prosecuted within one year after the offence is committed. *L. L. T. pt.* 1, *p.* 36 *pass'd* 9*th July* 1806.

Keeping ferry without license.

Penalty.

Private damages.

Penalties how recovered.

Limitation.

Sec. 7. Upon the non-performance of his duties as ferryman, the said court may at any time revoke his license, and grant the same to any other suitable person, subject to the conditions herein before recited. *ib. ib. ib.*

License may be revoked &c.

FINES AND FORFEITURES.

Sec. 1. It shall be and it is hereby declared the duty of the attornies prosecuting pleas in the behalf of the United States and this territory within their respective circuits at all times and as soon as may be to commence suits or move against all and every officer or other person who has or may hereafter incur any fine forfeiture penalty or recognizance within this territory, and the courts before whom such prosecution suit or motion shall be had, shall proceed without delay to hear and determine the same according to law and the rules of the court, and any attorney or attornies prosecuting as aforesaid refusing or neglecting to bring suit or move against such officer or other persons as aforesaid, at the next succeeding term of the circuit court of his circuit, he shall forfeit and pay a fine of five hundred dollars to be recovered before any court of record, one half going to the person prosecuting for the same and

To be sued or moved for &c.

Cir. att'y failing to prosecute, penalty.

one half to the territorial treasury. *L. M. T. Dec, sess.* 1815 *p.* 132, *pass'd 25th Jan.* 1816.

FORCIBLE ENTRY AND DETAINER.

What deemed

Sec. 1. No person or persons shall hereafter make any entry into any lands, tenements or other possessions, but in cases where entry is given by law, and in such case, not with strong hand nor with multitude of people, but only in a peaceable and easy manner; and if any person or persons from henceforth do to the contrary, he shall be taken and deemed to have entered with force and strong hand as is herein after provided, and it shall not be deemed necessary for the complainant as herein after named to make any other proof of the forcible entry and detainer with strong hand or of the forcible detainer only than that he was lawfully possessed of the premises, and that the defendant unlawfully entered into and detained the same from him or them.* *L. M. T. Dec. sess.* 1813, *p.* 42, *pass'd* 19*th Aug.* 1813.

Two justices to enquire by jury.

Sec. 2. Any two justices of the peace shall have authority to inquire by jury as herein after directed as well against those who make unlawful and forcible entry into lands and tenements and with strong hand detain the same, as against those who having lawful and peaceable entry into any lands or tenements unlawfully and by force hold the same—And if it be found upon enquiry that an unlawful and forcible entry hath been made, and that the same lands and tenements are held and detained with force and strong hands, or that the same after a lawful entry are held unlawfully or with force and strong hand then such justices shall cause the party complaining to have restitution thereof. *ib. p.* 43—4 *ib.*

And award restitution.

Complaint how made.

Sec. 3. When complaint shall be personally made in writing to any two justices of the peace in the county in which the lands and tenements lie of any unlawful and forcible entry into lands or tenements and detainer as aforesaid: or of any unlawful and forcible detainer after a peaceable entry they shall make out their summons, according to the form in this act prescribed,† under their hands and seals, directed to the sheriff or coroner as the case may be, of the same county com-

Summons to issue.

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* *Tenant holding over, see post sec.* 7 *and* 10.

† *Post section.* 11.

manding him to cause to come before them the person against whom the complaint shall be made at a day in such summons named, which shall not be less than six days nor more than twelve days from the time of issuing said summons and at the place therein named; and which said summons shall be served at least five days before the return day thereof, either by reading the same to the defendant or defendants or by leaving a copy thereof at their respective places of abode; and they shall also issue a precept to the said sheriff or coroner in the form herein after prescribed* commanding him to cause to come before them twelve good and lawful men, to be qualified to serve as jurors, as provided in the "Act regulating the mode of selecting and returning jurors" at a certain time and place in such precept named and at the same time and place appointed for the trial or hearing of said complaint and if a sufficient number of jurors summoned by the sheriff or coroner do not attend or are set aside by challenge, the said justices may order the sheriff or coroner to complete the number by returning others forthwith. *ib. p.* 44—5 *ib.*

When to be returnable.

When to be served.

Precept for summoning a jury.

Sec. 4. The sheriff or coroner shall return to the said justices the summons and precept aforesaid on the day assigned for trial or hearing of the cause and shall state on the back of said summons, how and in what manner he hath served the same on the party, together with a list of the jury summoned in obedience to the precept; and if the party does not appear at the time appointed for hearing the said complaint the said justices may proceed *ex parte* or adjourn the case at their discretion, except that they shall not adjourn for a longer time than ten days, nor to any other place than that assigned for the hearing of the complaint as named in the summons or precept. *ib. p.* 46 *ib.*

Return of process.

Deft. not appearing.

Sec. 5. The said justices shall have power or any one of them to issue summons for witnesses on the application of either party, or to enter up a rule for taking depositions, the party obtaining the same giving the opposite party, a copy of such rule, together with a notice of the time and place of taking the same, which notice shall be served, giving to the opposite party one day's notice for every twenty miles travel and no more—And if the witnesses so summoned do

Witnesses to be summoned.

Depositions.

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* *Post sec* 12.

not attend the justices may at their discretion, on the application of either party adjourn the case for any term not exceeding ten days and shall have authority to issue attachment for the witnesses so summoned to compel their attendance on the day to which the cause shall stand adjourned. *ib. p.* 46—7 *ib.*

Oath of the jury.

Sec. 6. The jury being empannelled shall be sworn well and truly to try the forcible entry and detainer and a true verdict thereon to give according to evidence—and if the jury after a full hearing find the person or persons complained against guilty of the forcible entry and detainer,* they shall all sign the verdict and the said justices shall enter up judgment for the complainant to have restitution of the premises, and shall tax costs for the complainant and shall also award their writ of restitution according to the form prescribed by law.† But if the jury find that the person complained against is not guilty, the complaint in their opinion not being supported, the said justices shall tax costs against the complainant and issue execution accordingly and no appeal shall be allowed from the judgment of the justices aforesaid : *Provided nevertheless* That the proceedings may be removed by *certiorari* into the court of common pleas [circuit court] holden in said county and be there set aside for irregularity, if any such there be : nor shall such judgment be a bar to any other action at law, brought by either party, either to try the right of property or for intermediate damages. *ib. p.* 45—6 *ib.*

Verdict.

Judgment.

No appeal.

Tenant holding over.

Sec. 7. When any person shall wilfully and without force hold over any lands, tenements or other possessions, after the determination of the time for which they were demised or let to him, or the person under whom he claims, or when any person wrongfully and without force, by desseisin shall obtain and continue in possession of any lands, tenements or other possessions and after demand made in writing for the deliverance of the possessions thereof by the person having the legal right to such possession his agent or attorney, shall refuse or neglect to quit such possession, upon complaint thereof in writing to two justices of the peace as aforesaid, the said justices shall proceed to hear try and determine the same in like manner as in cases of forcible entry and detainer and issue a writ of restitution accordingly. *ib. p.* 47 *ib.*

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* *See Form post sec.* 13.

† *Post sec.* 14.

Actual setlers on U. S. lands may have this remedy.

Sec. 8. Every person or persons who shall have heretofore or may hereafter make and establish a settlement on public land, and who shall have resided for one year on the same, next before the forcible entry and detainer complained of by him or them shall and may have the same remedy as is herein before provided in other cases of forcible entry and detainer or detainer only, against any person or persons who shall make unlawful entry upon him or them as aforesaid except against any authorised officer on the part of the United States, who shall have power to enter lawfully on him on behalf of the United States. *ib. p.* 47—8 *ib.*

Except agt. authorised U. S. officer.

Limitation of this remedy.

Sec. 9. This law shall not extend to any person who hath had the occupation or been in quiet possession of any lands or tenements the space of three whole years together next before the filing of the complaint or who, hath continued five whole years in peaceable possession after the time for which the premises were demised or let to him or them under whom he claims shall have expired. *ib. p.* 52, *ib.*

Extent to which plff. may recover.

Sec. 10. When any entry shall be made into or upon any lands, tenements or other possessions, or any lawful entry made, unlawfully continuing over the term against the act to which this is a supplement,* the person or persons having the lawful possession thereof, shall against the wrong doer or trespasser, be considered as entitled to such quantity, and to such extent and limits of lands, as by the patent, grant, concession, survey, donation, settlement or pre-emption right, such person, or those under whom he claims, can, by the laws of the United States, have and lawfully claim in and to such premises; and in case no legal survey hath been made of such possessions the improvement of such person entitled to the possession, shall be in the middle of the tract, or as near as may be, making the survey as nearly in a square as the same may be, not to enterfere with any established surveys, or line, or any conditional lines agreed upon by the abjoining proprietors, or possesors. *ib. Dec. sess.* 1816, *p.* 117 *pass'd 1st Feb. in force* 1 *March,* 1817.

Form of summons.

Sec. 11. The justices shall make out their summons to the party complained against in the form following to wit: County of ss. A. B. & C. D. two justices assigned to keep the peace within and for the said county of to the of the said county greeting: Summon G. H. of your county to appear before us at in the said county at o'clock then and there to answer to E. F. and defend against the complaint of the said E. F. as to us exhibited wherein he complains (take in the complaint) and you are to make return of this summons with your proceedings thereon, on or before the said day. Witness our hands and seals the day of in the year

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* *Ante sec.* 1 & 7.

A. B. & C. D. } *Justices of the peace.*

L. M. T. July sess. 1813: *p.* 48, *pass'd* 19*th*, *Aug.* 1813.

Form of precept for summoning a jury. Sec. 12. The precept shall be in the words following to wit: County of ss. A. B. & C. D. Esquires two justices assigned to keep the peace within and for the said county greeting: Whereas complaint is made to us by E. F. in the county aforesaid that G. H. of Yeoman upon the day of at with force and arms and with a strong hand did unlawfully and forcibly enter into and upon a tract of land or messuage or tenement (as the case may be) of him the said E. F. in aforesaid, containing acres bounded as follows (take in boundaries) and him the said E. F. with force and a strong hand as aforesaid did expel and unlawfully put out of possession of the same (or if it is forcible detainer only, or an unlawful holding over, then the entry shall be described and the detainer inserted as follows) and the said E. F. does unlawfully, unjustly and with strong hand deforce and still keep out of possession of the same; you are therefore commanded on behalf of the United States to cause to come before us upon the day of at in the said county, twelve good and lawful men of your county to be empannelled and sworn to enquire into the forcible entry and detainer (or for the detainer only) before described. Given under our hands and seals the day of in the year

A. B. & C. D. } *Justices of the peace.*

ib. p. 48. *ib.*

Form of verdict. Sec. 13. The form of the verdict shall be as follows. At a court of enquiry held before A. B. & C. D. Esquires two justices assigned to keep the peace within and for the county of in the said county of upon the day of in the year the jury upon their oaths do find that the lands or tenements in aforesaid, bounded and described as follows. as in the complaint, upon the day of in the year were in the lawful and rightful possession of said E. F. and that the said G. H. did upon the same day, unlawfully, with force and strong hand, expel and drive out the said E. F. and that he still continues wrongfully to detain the possession from him the said E. F. (or that being lawfully possessed, he still continues unlawfully to hold the same over,) wherefore the jury find upon their oaths or affirmations that the said E. F. ought to have restitution thereof, without delay. *ib. p.* 49–50, *ib.*

Form of writ of restitution.

Sec. 14. The said writ of restitution shall be in the form following to wit: County of ss. A. B. & C. D. Esquires, two justices assigned to keep the peace in and for the said county to the of said county greeting: Whereas at a court of enquiry of forcible entry and detainer (or detainer only as the case may be) held before us at in the said county of upon the day of in the year the jurors impannelled and sworn according to law did return their verdict in writing signed by each of them that E. F. was upon the day of in the rightful possession of a certain messuage or tract of land (as in the verdict returned) or was rightfully entitled to the possession of said land or messuage (as the case may be if for holding over only) whereupon it was considered by us that the said E. F. should have restitution of the same; we therefore require you that taking with you the force of the county (if necessary) you cause the said G. H. to be forthwith removed from the premises and the said E. F. to have the peaceable restitution of the same; and also that you levy of the goods and chattels lands and tenements of the said G. H. found in your county the sum of being taxed in costs against him on the trial aforesaid, together with more for this writ and your own fees. And for want of sufficient goods and chattels, lands and tenements of the said G. H. found in your county whereon to levy and make the same; you are commanded to take the body of the said G. H. and him commit to the common jail of the county, there to remain until he shall pay the sum aforesaid together with all the fees adjudged for the service of this writ or until he be delivered by a due course of law. And make return of this writ with your proceedings thereon. Witness our hands and seals at aforesaid the day of in the year

A. B. & C. D. } *Justices of the peace.*

ib. p. 50, *ib.*

FORGERY.

See Crimes and Misdemeanours, sec. 12.

FORGING AND COUNTERFEITING.

See Crimes and Misdemeanours, sec. 13.

FRAUDS.

Certain gifts grants, conveyances, bonds, suits, judgt's & execution deem'd fraudulent,

Sec. 1. Every gift grant or conveyance of land, tenements or hereditaments, goods or chattels or any right of common or profit issuing out of the same by writing or otherwise and every bond, suit, judgment or execution, had, made or contrived of malice, fraud, coven, collusion or guile to the intent or for the purpose of delaying, hindering or defrauding creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures or to defraud or deceive those who shall purchase the same tenements or hereditaments or any rent, profit or commodity issuing out of them shall be from henceforth deemed and taken (only as against the person or persons, his, her or their heirs, successors, executors, administrators or assigns, and every of them, whose debts, fraudulent, gift, grant, or conveyance of suits, demands, estates and interest, by such guileful and covenous devices and practices as aforesaid, shall or might be in any wise disturbed or hindered, delayed or defrauded) to be clearly and utterly void,* any pretence colour or feigned consideration expressing of use, or any other matter or thing to the contrary notwithstanding. And moreover if a conveyance be of goods and chattels, and be not on consideration deemed good or valuable in law it shall be taken to be fraudulent with [within] this act, unless the

Goods & chattles without consideration unless, &c.

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* *See Crimes and Misdemeanours sec.* 15, *by which a penalty is enforced on persons making fraudulent deeds.*

Acknowledgment or proof of conveyance of goods and chattels.

Loans.

Reservation if held five years, &c. Property, declared in possessor unless, &c.

same be by will duly proved and recorded, or by deed in writing acknowledged and proved, if the same deed includes lands also, in such manner, and within such time, as conveyances of lands are by law directed to be acknowledged, proved and recorded,* but if it be of goods and chattels only, then acknowledged or proved by two witnesses, in the office of the clerk of the superior court of this territory, the clerks of circuit courts, or before any justice of the peace or other competent authority within the county, wherein one of the parties live, within three months after the execution thereof, or unless possession shall really and bona fide accompany the gift or conveyance; and in like manner where any goods or chattels shall be pretended to have been loaned to any person, with whom, or claiming under him [in whom] possession shall have remained for the space of five years, without demand made and pursued by due process at law, on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of any use of property, by the way of condition, reversion, remainder or otherwise, in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to creditors and purchasers of the persons aforesaid, so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded as aforesaid, and even then the purchasers or creditors, may shew actual fraud, and on such fraud being established every such gift, contract, sale, loan or possession, shall be set aside in favour of such creditors or purchasers, and the provisions of this section shall also be extended to subsequent creditors, after such pretended gift sale, contract, loan or conveyance. *L. M. T. Dec. sess.* 1815 *p.* 39–40–41, *pass'd* 20*th Jan. in force* 1*st June,* 1816.

This act not to extend to certain cases.

Sec. 2. This act† shall not extend to any estate or interest in any lands, tenements or hereditaments, goods or chattels, or any rents, profits or commons out of the same, which shall be upon good or valuable consideration and bona fide and lawfully conveyed as aforesaid, nor to any person or persons, body politic or corporate, who may be subsequent purchasers for bona fide considerations, without notice. *ib. p.* 41, *ib.*

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* *See Title Conveyances.*

† *Ante sec.* 1, *and title contracts, Promises & Agreements.*

FRAUDULENT DEEDS, &c.

See Crimes and Misdemeanours, sec. 15.

FRAUDULENT PRETENCES.

See Crimes and Misdemeanours, sec. 16.

FREEDOM.

Superior and circuit cts. may permit certain persons to sue as paupers.

Sec. 1. It shall be lawful for any person held in slavery to petition the general [superior] court or any court of common pleas [circuit court] praying that such person may be permitted to sue as a poor person, and stating the grounds on which the claim to freedom is founded. If in the opinion of the court the petition contains sufficient matter to authorise their interference the court shall award the necessary proceess to bring the cause before them. *L. L. T. pt.* 1, *p.* 65, *pass'd 27th June,* 1807.

Manner of instituting such suits.

Proceedings thereon.

Sec. 2. The court to whom application is thus made may direct an action of assault and battery and false imprisonment, to be instituted in the name of the person claiming freedom against the person who claims the petitioner as a slave, to be conducted as suits of the like nature between other persons. And the court shall assign the petitioner counsel and if they deem proper shall make an order directing the defendant or defendants to permit the petitioner to have a reasonable liberty of attending his counsel and the court when occassion may require it, and that the petitioner shall not be taken or removed out of the jurisdiction of the court nor be subjected to any severity because of his or her application for freedom. *ib. p.* 66, *ib.*

Proceedings where order of court has been or is about to be violated,

Sec. 3. If the court or any judge thereof in vacation shall have reason to believe that the above order has been or is about to be violated, in such case the said court or any judge thereof in vacation may require that the person of the petitioner be brought before him or them by writ of habeas corpus, and shall cause the defendant or defendants his, her, or their agent, to enter into recognizance with sufficient security conditioned as recited in the above order, or in case of refusal to direct the sheriff of the district [county] to take possession of the petitioner, and hire him or her to the best advantage, which hire shall be appropriated either to the petitioner or to the defendant or defendants, as the event of the suit may justify. And the person hiring the petitioner shall enter into recognizance with sufficient security conditioned as the above order directs. *ib. ib. ib.*

Court may instruct jury as to proof.

Sec. 4. The court before whom such suit may be tried may instruct the jury that the weight of proof lies on the petitioner, but to have regard not only to the written evidences of the claim to the freedom but to such other proofs either at law or in equity [as] the very right and justice of the case may require. And the court on verdict in favour of the petitioner may pronounce a judgment of liberation from the defendant or defendants and all persons claiming by, from, or under him her or them. *ib. ib. ib.*

Judgment.

Removal appeal writ of error.

Sec. 5. Suits instituted in any court of common pleas [circuit court] under this law may be removed into the general [superior] court before judgment, or if judgment is given in any such cause in the court of common pleas [circuit court] appeal or writ of error shall lie to the general [superior] court as in other cases. *ib p.* 67, *ib.*

GAMING.

See Vice and Immorality, sec. 3 *to* 6.

GAOLS AND GAOLERS.

Gaols being insufficient, &c court may allow salary to a deputy gaoler

Sec. 1. Whenever any of the sheriffs of the respective districts, [county] within this territory, shall be of opinion, that any of the gaols of the respective districts [counties,] are insufficient to secure the prisoners that shall be confined therein, and that the situation of any of said gaols is such, that they cannot give all the necessary attendance to the same, they shall respectively give information thereof to the respective courts of common pleas [ciurcuit courts] at their next sitting; whereupon it shall be lawful for the said respective courts, if they deem it expedient, to allow any sum not exceeding one hundred and fifty dollars per annum, to a deputy gaoler for each district, [county] so long as they may see cause for it, and make similar orders and revoke them, agreeable to their discretion, and as in their opinions the cases may require: *Provided however,* That such deputies shall be appointed by the sheriffs, and shall be under their sole direction, and removed by the same when the said respective sheriffs shall see cause. *L. L. T. pt.* 1, *p.* 340, *pass'd* 9*th Nov.* 1808.

Salary of deputy gaoler how paid.

Sec. 2. The sums that shall be allowed for the aforesaid compensation or any part thereof in proportion to the duration of the services of the respective deputies, shall be paid to the said deputies by the treasurer of the respective districts [counties] on the order or warrant of the auditors of said districts, who shall audit and allow the said compensation to the said deputy gaolers on said deputies producing to the auditors a certificate under the hands of the sheriff, that the said deputies have performed the duties thereof during so long a time, as the case may be, and also on producing a duly certified copy of the order of the court, by which such respective deputies shall be allowed compensation. *ib. p.* 341, *ib.*

Criminal prisoners how to be provided with food.

How p'd. for.

Fuel.

Sec. 3. Whenever any person or persons committed upon criminal process, under the law of this territory shall declare that he or they are unable to buy or procure their necessary food, in such cases the sheriffs of the respective districts [counties] shall provide such prisoner or prisoners with food which shall be allowed to them respectively, by the respective district auditors at the rate of twenty cents per day. And when the inclemency of the season or the sickness of any prisoner or prisoners, shall in the opinion of the respective sheriffs, require that such prisoners should be furnished with fire, it shall be the duty of such sheriffs to furnish the necessary fuel and charge the same to the district [county]: *Provided however,* It shall be the duty of the respective auditors, to reduce the said charges to what they shall deem to be reasonable in case they should find them to be excessive. *ib. p.* 342, *ib.*

Counties to maintain criminal prisoners.

Sec. 4. And in all cases where any person is confined in jail upon any criminal charge whatever the proper county shall pay for the maintainance of the prisoner,* unless the court before whom such criminal shall be tried, may direct and order otherwise.† *L. M. T. Dec. sess,* 1814, *p.* 77, *pass'd* 20, *Jan.* 1816.

Prisoners in civil cases

Sec. 5. When any person is confined in any jail within this territory or within the prison bounds thereof, how maintained.

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* *See also post sec. 9.*

† *May be compelled to labor, See Crimes, &c sec. 44.*

and may be insolvent or unable to maintain themselves, the plaintiff at whose suit such person may be confined, shall pay for the maintainance of such prisoner, twenty five cents per day; to be paid to the sheriff or jailer to furnish such prisoner with provisions to the full amount thereof. And in case the said plaintiff shall refuse by himself, agent or attorney, to pay the money as aforesaid, the sheriff or jailer may recover the same together with his costs before any justice of the peace within the county, in the same manner all debts are collected before a justice of the peace:* *provided however*, That the plaintiff shall always be entitled to recover from the insolvent debtor on action of debt the full amount of such money he may have paid for his provision, out of any property that he may thereafter possess. *ib. p.* 76–7, *ib.*

How compelled.

To be afterwards recovered of deft.

Sec. 6. And it is hereby declared the duty of the several county [circuit] courts within this territory to see that all prisoners, civil and criminal are humanely treated.† *ib. p.* 77, *ib.*

Prisoners to be humanely treated.

Sec. 7. It shall and may be lawful for the sheriff of any county in this territory, where there shall happen to be no jail, when the jail of such county shall be insufficient, upon taking into custody any person or persons charged with a criminal or supposed criminal offence, or on a capias or execution, to commit such person or persons to the common jail of any of the adjoining counties in the circuit where such person or persons was or were apprehended, and is or are to be tried, and it is hereby made the duty of the sheriff or keeper of such jail to receive such person or persons so committed, as aforesaid, and him, her or them safely keep, subject to the order or orders of the circuit judge for the said circuit, or any one of the judges of the superior court for the said territory. *L. M. T. Dec. sess.* 1816 *p.* 93 *pass'd* 31*st Jan.* 1817.

Where there is no jail or jail is insufficient how prisoner to be disposed of

Sec. 8. It shall be the duty of the sheriff, so committing any person or persons as aforesaid, forthwith to notify the circuit judge for the circuit where such person or persons thus committed is or are to be tried, or the presiding judge of the superior court, if the offence be of a capital nature, of the committing of such person or persons to the jail of such adjoining county, and transmit at the same time to such circuit or presiding

Notice to be given to a judge.

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† *See also post sec.* 9.

Duty of judge.
Duty of sh'ff.
Penalty on failure.
Sh'ffs fees.

judge, a copy of the day and cause of the caption and detention of such person or persons thus committed as aforesaid, whereupon it shall be the duty of such circuit or presiding judge within fifteen days next preceding the first day of the circuit or superior court of the county where such person or persons is or are to be tried, to issue a writ or writs of habeas corpus, directed to the sheriff or keeper of the jail of the county where such person or persons is or are committed, commanding him or them to have the body or bodies, of such person or persons thus committed, together with the day and cause of his, her or their caption and detention, before the circuit court of the said county, or if the offence be of a capital nature, before the superior court of the said county, for the trial of such offences on the first day of the then next term of the said court; and it shall be the duty of said sheriff or jail keeper, to bring or cause to be brought, the said person or persons thus committed as aforesaid, on the day and at the place mentioned in the said writ. Any sheriff or keeper of a jail as aforesaid, failing or neglecting to make return as aforesaid, and to bring the body or bodies of said person or persons, according to the command in the said writ, shall be deemed guilty of a contempt to the said judge or court and be subject to the same punishments and penalties provided for by the seventh section of an act regulating the proceedings on writs of habeas corpus,* and the sheriffs for committing and executing the said writs of habeas corpus, shall be entitled to the like fees as are provided by law for similar services. *ib. p.* 94 *ib.*

Expences how paid.

Sec. 9. In all cases where a person is committed from another county, for a criminal offence, under this act, such county or the prisoner shall pay the expenses thereof, unless in capital cases; and in civil cases the plaintiff or defendant shall pay the costs to be taxed and collected as other costs in such cases. *ib. p.* 95 *ib.*

GIFTS.

See Frauds, sec. 1-2 and Slaves, sec. 25-26-27.

GUARDIANS.

See Title Minors, Orphans and Guardians, and title Idiots and Lunatics.

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* *Title Habeas Corpus, sec. 6.*

How obtained on commitment for a criminal or supposed criminal matter.

To whom directed and when returnable.

Form of the writ.

How & when to be returned.

Charges to be paid, &c.

Cause of commitment to be

Sec. 1. If any person shall be or stand committed or detained for any criminal or supposed criminal matter, unless for treason *or felony*,[*] the species whereof is plainly and fully set forth in the warrant of commitment, in vacation time, and out of term,[†] it shall and may be lawful to and for the person so committed or detained, or any one on his or her behalf, to appeal or complain to any judge of the general [superior] court, or of the court of common pleas [circuit court][‡] for the the district [county] within which the person is so committed or detained, and such judge upon view of the copy or copies of the warrant or warrants of commitment, or otherwise upon oath or affirmation legally made that such copy or copies were denied to be given by the person or persons in whose custody the prisoner is detained, is hereby authorised and required upon request made in writing by such prisoner, or any person on his or her behalf, to award and grant a writ of *habeas corpus* under the hand of the judge to be directed to the person in whose custody the prisoner is detained, returnable immediately before the said judge. And to the intent that no officer, sheriff, gaoler, keeper or other person to whom such writ shall be directed may pretend ignorance thereof, every such writ shall be made in this manner "By act of the legislature 1807." And whenever the said writ, shall by any person be served upon the sheriff, gaoler, keeper or other person whatsoever to whom the same shall be directed, or being brought to him or being left with any of his under officers or deputies at the goal or place where the prisoner is detained he or some of his under officers or deputies shall within three days after the service thereof as aforesaid, upon payment or tender of the charges of bringing the said prisoner to be ascertained by the judge who awarded the writ, and thereon endorsed not exceeding ten cents per mile, and upon sufficient security given to pay the charges of carrying him back if he shall be remanded, make return of such writ, and bring or cause to be brought the body of the prisoner before the judge who granted the writ and in case of his absence before any other of the judges aforesaid. And shall then likewise specially and fully certify the true cause or causes of the commitment and detainer of certified on return.

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[*] *Unless for treason, or some* capital *crime, &c. See post sec.* 3 *&* 14.

[†] *Or on motion, in term time, see post section* 2.

[‡] *Or any two justices of the peace—See post section* 14

Further time allowed to make return in certain cases

Prisoner to be discharged on recognizance within 2 days if offence be bailable.

Judge may remand, admit to bail or discharge prisoner.

Return, &c. may be amended.

the said prisoner and when he was committed, unless the commitment be in any place beyond the distance of twenty miles from the place where such judge shall be residing, and if beyond the distance of twenty miles and not above one hundred miles then within ten days and if beyond the distance of one hundred miles then within twenty days; and thereupon the judge before whom the prisoner shall be brought shall within two days discharge the prisoner from imprisonment, taking his or her recognizance with one or more sureties in any sum according to his discretion, having regard to the circumstances of the prisoner and the nature of the offence, for his or her appearance at the next court of oyer and terminer, general jail delivery, or quarter sessions of or for the district where the offence was committed or in such other court where it may be properly cognizable as the case may require, and then shall certify the said writ, with the return thereof and the recognizance aforesaid into the court where such appearance is to be made; unless it shall appear to the said judge that the party so committed is detained upon legal process, order,* a warrant for such matter or offences for which by the law said prisoner is not bailable. And the said judge, may, according to the intent and meaning of this act, be enabled by investigating the truth of the circumstances of the case to determine whether according to law the said prisoner ought to be bailed, remanded or discharged; the return may be amended before or after it is filed by leave of the said judge, and all suggestions made against it, that thereby material facts may be ascertained. *L. L. T. pt.* 1, *p.* 68 *to* 70, *pass'd* 27*th June*, 1807.

Hab. corpus may be awarded in term time.

Sec. 2. In term time it shall and may be lawful for any prisoner as aforesaid in manner aforesaid to move for and obtain his or her *habeas corpus* out of the general [superior] court or the court of common pleas [circuit court] for the district [county] where he or she is imprisoned, whereupon proceedings shall be had as aforesaid. *ib. p.* 70 *ib.*

Certain cases to which this act shall not extend.

Sec. 3. Provided that nothing in this act shall extend to discharge out of prison any person guilty or charged with treason against the United States, or treason, felony, or other high misdemeanor in any other state or territory who by the constitution and laws of the

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* *Informality in warrant of commitment not to be regarded—See post sec.* 15.

United States ought to be delivered up to the executive power of such state or territory. And provided also that nothing in this act shall extend to discharge out of prison any person charged with debt or other action, or with process in a civil cause, but that after discharge for such criminal or supposed criminal matter, he or she shall be kept in custody according to law for such other suit. *ib. p. 71 ib.*

Persons committed not to be removed in certain cases.

Sec. 4. That no person may avoid his or her trial, no person shall be removed upon any *habeas corpus* granted in pursuance of this act, out of the district [county] in which he or she is confined, and where the offence with which he or she stands charged is cognizable within fifteen days next preceding the term, sessions of oyer and terminer, quarter sessions or other court proper to try same. *ib. p. 72 ib.*

Penalty on judge refusing habeas corpus.

Sec. 5. If any judge aforesaid being complained to as aforesaid upon view of the copy or copies of the warrant or warrants of the commitment or detainer or upon oath or affirmation made that such copy or copies were denied as aforesaid, shall refuse or neglect to award any writ of *habeas corpus* by this act required to be granted, he shall forfeit to the prisoner or party grieved a sum not exceeding one thousand dollars, to be recovered by the prisoner or party grieved his or her executors or administrators against such offender, his executors or administrators by action of debt in any court of record. *ib. p. 72 ib.*

Officer neglecting or refusing to make return &c.

Sec. 6. If any officer, sheriff, gaoler, keeper or other person to whom any such writ shall be directed as aforesaid, or any of his under officers or deputies shall neglect or refuse to make the returns aforesaid or to bring the body of the prisoner according to the command of the said writ within the respective times aforesaid, all and every such officer, sheriff, gaoler keeper or other person, under sheriff or deputy shall be guilty of a contempt to the judge who issued said writ whereupon the said judge may and shall issue a writ of attachment against such officer, sheriff, gaoler, keeper or other person, under-sheriff or deputy and cause him or them to be committed to the jail of the district [county,] there to remain without bail or main-prize until he or they shall obey the said writ; and such officer, sheriff, gaoler, keeper, or other person under sheriff or deputy, shall also forfeit to the prisoner or party aggrieved a sum not exceeding five hundred dol-

To be imprisoned.

And pay penalty and be rendered incapable of holding his office

lars, and shall and is hereby made incapable of holding or executing his said office. The said forfeiture to be recovered by the prisoner or party grieved, his executors or administrators in manner aforesaid. *ib. p.* 72 *ib.*

Officers refusing, &c, copy of commitment

Sec. 7. If any officer, sheriff, gaoler, keeper or other person or any of his under officers or deputies upon demand by the prisoner or some person in his or her behalf shall refuse to deliver, or within six hours after such demand shall not deliver to the prisoner or person so demanding the same, without fee or reward, a true copy or copies of the warrant or warrants of commitment and detainer of said prisoner, which are hereby required to be delivered, all and every such officer, sheriff, gaoler, keeper or other person, under officer or deputy so offending shall forfeit to the prisoner or party grieved a sum not exceeding three hundred dollars to be recovered by the prisoner or party grieved his or her executors or administrators in manner aforesaid. *ib. p.* 73 *ib.*

Penalty

Persons set at large not to be recommitted.

Sec. 8. No person who shall be delivered or set at large upon an *habeas corpus* shall at any time thereafter be again committed or imprisoned for the same offence by any person or persons whatsoever, other than by the legal order and process of such court wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause. And if any person or persons shall knowingly contrary to this act recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned for the same offence or supposed offence any person delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, any pretence of variation in the warrant or warrants of commitment notwithstanding, a sum not exceeding one thousand dollars to be recovered by the prisoner or party grieved, his or her executors or administrators in manner aforesaid. *ib. p.* 73—4 *ib.*

Penalty on offenders.

Persons committed to one prison not to be removed to any other unless, &c.

Sec. 9. Any person being committed to any prison, or in the custody of any officer, sheriff, gaoler, keeper or other person or his under officer or deputy, for any criminal or supposed criminal matter shall not be removed from the said prison or custody into any other prison or custody unless it be by *habeas corpus* or some other legal writ, or where the prisoner shall be delivered to the constable or other inferior officer to be carried to some common gaol, or shall be removed from one place to another within the district [county] in order to his discharge or trial, in due course of law, or in case of sudden fire or infection or other necessity, or where the prisoner in pursuance of a law of the United States may be claimed or demanded by the executive of any of the United States or territories. And if any person or persons shall after such commitment as aforesaid make out, sign or countersign any warrant or warrants for such removal except as before excepted, then he or they shall forfeit to the prisoner or party aggrieved a sum not exceeding three hundred dollars, to be recovered by the prisoner or party grieved in manner aforesaid. *ib. p. 74 ib.*

Penalty

Provision of this act to extend to certain cases where party is confined or restrained not for a criminal charge.

Sec. 10. All the provisions herein before made for the awarding and granting writs of *habeas corpus* and proceedings thereon in case of commitment or detainer for any criminal or supposed criminal matter shall in like manner extend to all cases, where any person not being committed or detained for any criminal or supposed criminal matter shall be confined or restrained of his or her liberty under any colour or pretence whatsoever, and upon oath or affirmation made by such persons so confined or restrained, or by any other person in his or her behalf, of any actual confinement or restraint or that such confinement or restraint to the best of the knowledge or belief of the person so applying is not by virtue of any commitment or detainer for any criminal or supposed criminal matter, an *habeas corpus* directed to the person or persons so confining or restraining the party as aforesaid shall be awarded and granted in the same manner and under the same penalties to be recovered from the same persons; as is herein before directed, and the court or judge before whom the party so confined or restrained shall be brought, shall after the return made, proceed in the same manner as is herein before prescribed to examine into the facts relating to the same and into the cause of such confinement and restraint, and thereupon either bail, remand or discharge the party so brought as to justice shall appertain. *ib. p. 75—6 ib.*

To whom directed

Directed to a private individual how to be served.

Sec. 11. Whensoever any writ of *habeas corpus* awarded and granted either in term or vacation time for any person so confined or restrained without a commitment for any criminal or supposed criminal matter, shall be served upon the person so confining or re-

Return how and when to be made.

Party failing or refusing.

May be imprisoned.

And pay to party injured.

straining, such party, by being brought to such person or persons or being left at the place where the party shall be so confined or restrained, the person or persons so confining or restraining such party shall make return of such writ, and bring or cause to be brought the body of such party according to the command thereof within the respective times limited and under the provisions herein before prescribed, and every such person refusing or neglecting so to make return of the said writ or to bring or cause to be brought the body of the party according to the command thereof, within the respective times limited and under the provisions herein before prescribed, shall be guilty of a contempt to the court or to the judge who may have issued the said writ. Whereupon the said court, if the writ has been issued in term time, or the judge, if the same has been issued by him in vacation, may and shall issue a writ of attachment against the person in whose custody the party shall or may be, and cause him, her or them to be committed to the jail of the district [county] there to remain without bail or main-prize until he, she or they shall obey said writ. And such person in whose custody he or she shall or may be, and by whom said party is thus restrained or confined, shall also forfeit to the party aggrieved a sum not exceeding five hundred dollars to be recovered in manner aforesaid. *ib. p. 76—7 ib.*

Death of parties not to bar action under this act.

Must be brought within 2 years, &c

Sec. 12. The right of action for the recovery of any penalty provided for by this act, shall not cease by the death of either of the parties, or of both of them, but such penalties may be sued for and recovered by the executors or administrators of the party aggrieved, against the offender his executors or administrators; *Provided* That no person shall be sued impleaded or troubled for any offence unless such person be sued or impleaded for the same within two years after the time wherein the said offence shall have been committed, in case the party grieved shall not then be in prison, confined or restrained as aforesaid, then within two years after the decease of the person imprisoned or so confined or restrained or his or her delivery out of prison or from such confinement or restraint. *ib. p. 77 ib.*

Def't. may plead general issue & give special matter in evidence

Sec. 13. In or upon any action or suit for any offence against this act the defendant or defendants may plead the general issue and give the special matter in evidence. *ib. ib. ib.*

Application to whom to be made,

Time of hearing cause to be set.

Process for witnesses.

Proviso in favour of persons who have complied with their sentence.

Sec, 14. It shall and may hereafter be lawful for any person that may or shall stand committed or detained for any criminal charge or matter, or supposed criminal matter, unless for treason or some capital crime the species whereof is fully and plainly set forth in the warrant of commitment;* and unless in those cases where the criminal has been committed after and on conviction by some court of justice competent to try the offence wherewith the person was charged, to apply to any judge of the superior court or judge of the court of common pleas [circuit court,] or any two or more justices of the peace of the county where such person stands committed for a writ of habeas corpus as is provided by the act to which this is a supplement.† And it shall be the duty of such judge or justices of the peace to grant such writ as is provided by the act to which this is a supplement. And it shall moreover be the duty of such judge or justices of the peace to set a time when they will hear the cause of imprisonment, which time shall not be more than fifteen days, nor less than five days after the time of issuing the said writ of habeas corpus, unless the prisoner shall request the time to be longer: and it shall be the duty of the judge or justices of the peace on appointing the time when they will hear the said cause, to issue compulsory process, directed to the constable of the township where such hearing is to be had for witnesses for or against the prisoner at the instance of the prisoner or at the instance of any person who may wish to prosecute. And the said constable shall serve the said process on the witnesses therein mentioned and shall have the same fees as is provided for him in serving other process. *Provided however*, That if any person is detained in prison or confinement after his or her time of imprisonment or confinement has expired and after such person paid the fine, if sentenced to pay any, together with all costs, such person shall be entitled to the benefit of this act with respect to writs of habeas corpus. *L. M. T. Dec. sess.* 1814, *p.* 59 *to* 61, *pass'd* 11*th Jan.* 1815.

Informality of warrant of com. disregarded.

Prisoner to be

Sec. 15. It shall be the duty of the said judge or justices of the peace to hear the evidence for and against said prisoner without any regard to any informality in the warrant of commitment or other proceedings previously had. And if it shall appear to said judge or remanded, bailed or discharged.

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* *Or where the prisoner is not tried at second term—Post sec.* 10.

† *Ante sec* 1.

justices that there is reasonable ground to believe that the prisoner has committed the offence charged upon him, in the warrant of commitment, they shall remand him to prison, or admit him to bail if the offence be bailable by law, and [if] the prisoner shall refuse to give bail or shall be unable, the judge or justices shall remand him as aforesaid. But if the prisoner shall offer good and sufficient bail the said judge or justices shall take the same and recognize the prisoner to appear at the next court to be holden in the county having jurisdiction of the said offence and shall return said recognizance to said court as is directed by the act to which this act is a supplement. But if it shall appear to the said judge or justices that the prisoner has not committed the offence charged upon him the prisoner shall be discharged. *ib., p.* 62, *ib.*

Discharge for want of trial at the second term.

Sec. 16. If any person shall be committed and not admitted to bail, and shall not be tried on or before the second term of the court of common pleas [circuit courts] or other court having jurisdiction of the offence, the prisoner shall be set at liberty by the court unless the delay shall happen on the application of the prisoner. *Provided however,* That if such court at the second term shall be satisfied that due exertions have been made to procure the evidence for the United States, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term. But if such prisoner shall have been admitted to bail for a crime other than a capital offence, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation, that the witnesses for the United States (mentioning their names, and shewing wherein they are material) are absent. *ib. p.* 62–3 *ib.*

Proviso.

Writs of habeas corpus to testify or to be surrendered in discharge of bail.

Sec. 17. The superior court and the several courts of common pleas [circuit courts,] within this territory, and the judge of the general court for the county of Arkansas. shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any jail within the same before them to testify, or be surrendered in discharge of bail. And when a writ of habeas corpus for the purpose of bringing into court any person to testify, or the principal to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this territory out of the county, in which such principal or wit-

To run into any county.

ness is required to be surrendered or testify, the writ may run into any county in this territory, and there be executed and returned by any officer to whom it shall be directed; and the principal after being surrendered or his bail discharged a person testifying as aforesaid, shall, by the officer executing such writ, be remanded to the jail from whence he was taken, by virtue of an order of the court, for the purposes aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. And the party praying out such writ of habeas corpus, shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively. *ib. p.* 61, *ib.*

Officers fees.

HIGHWAYS.

See Roads.

HOG STEALING.

See Crimes and Misdemeanours, sec. 11.

HORSE STEALING,

See Crimes and Misdemeanours, sec. 10.

HORSES.

Sec. 1. From and after the first day of January next, it shall be unlawful for any seed horse or stallion to run at large; and any person or persons, whose seed horse or stallion shall be found running at large, after the said first day of January, shall upon conviction thereof, before any court of record in this territory, be fined, for the first offence, any sum not exceeding three dollars, for the second offence, not exceeding the sum of six dollars, and for each offence thereafter, a sum not exceeding ten dollars; the one half of which forfeitures shall go to him or her, who shall prosecute the same to effect and the other half to the district treasury in the district in which the offence is committed. *L. L. T. pt.* 1, *p.* 87. *pass'd 9th July,* 1806.

Seed horses or stallions not suffered to run at large.

Penalties.

Sec. 2. It shall and may be lawful for any person to take into his custody any seed horse or stallion, which may be found running at large, and shall thereupon set up one or more notifications, at the place or places where public notifications are usually set up, stating that he has taken into his custody, a seed horse or stal-

Seed horses found running at large how dealt with.

lion found running at large, with a description as near as may be of such seed horse or stallion; and if at the end of ten days from the time of setting up such notification, no owner or proprietor, shall appear for such seed horse or stallion such person may call to his assistance two assistants, and may castrate said seed horse or stallion: *Provided always*, That the operation shall be performed in the usual manner so that the life of the animal be endangered as little as possible.* *ib. p.* 38 *ib.*

To be sold in certain cases.

Proceeds of sale how disposed of.

Sec. 3. If no owner or proprietor shall appear for the said horse so castrated, within two months from the time of setting up the notification before required, then it shall be lawful for the person having such horse in his possession to apply to the next court of general quarter sessions of the peace [circuit court] for the district [county] in which he or she resides, for the sale of such horse; and the said court are hereby authorised empowered and required to order the sale of such horse, at the court house door on some day of the same term of said court, which shall be sold by the sheriff to the highest bidder. And the sheriff shall immediately after such sale, deposit the same for which such horse sold, retaining first his own legal fees, into the hands of the clerk of the said court and the said court shall, after allowing to the person who has thus castrated and kept the said horse in his custody, his reasonable charges and expences for castrating and keeping said horse, pay the remainder of the sum for which such horse has been sold, if any there be into the district treasury for the use of the district: *Provided always*, That the sum so deposited in the district treasury, be paid to any person who shall within three years next thereafter, make sufficient and ample proof that such horse at the time of such sale was his or her property, which proof shall be made to the said court of general quarter sessions of the peace [circuit court.] *ib. p.* 38 *ib.*

Stallions if above two years old, may be taken up and castrated.

Sec. 4. It shall and may be lawful for any person or persons to take up any seed horse stallion, or stallins, above the age of two years, which may be found running at large and castrate or cause to be castrated the said seed horse or horses, stallion or stallions for which the said taker or takers up, of the said seed horse or horses stallion or stallions and castrating the same, shall receive for his or their trouble the sum of three

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* *See post sec* 4—5. *and note to sec.* 5.

Owner to pay three dollars.

dollars from the owner or owners, of such seed horse or horses, stallion or stallions, above the age of two years, to be recovered before any justice of the peace residing in the township where such owner or owners of such seed horse or horses stallion or stallions, live: *Provided always*, That the operation shall be performed in the usual manner, so that the life of the animal be endangered as little as possible. *Dec. sess.* 1816, *p.* 18, *pass'd Jan.* 14, *in force* 1 *March*, 1817.

Proviso.

Stallions above 2 years old may be killed if they cannot be taken up.

After 20 days notice.

Sec. 5. If there be any seed horse or horses, stallion or stallions, above the age of two years found running at large, and the said seed horse or horses, stallion or stallions cannot be taken up, the said seed horse or horses stallion or stallions may be killed by any person: *Provided*, That notice be put up in three of the most public places in the county, at least twenty days, which notice shall contain a description of the said horse, stallion or stallions, color natural marks or brands, if any, and then if no owner or owners shall appear and take away such seed horse or horses, stallion or stallions, then any person shall be at liberty to kill or destroy any seed horse or horses, stallion or stallions, so running at large.* *ib. p.* 19, *ib.*

HOWARD COUNTY.

See Counties, sec. 9.

IDIOTS AND LUNATICS.

Enquiry how made.

Appoint a guardian.

Support.

Sec. 1. Upon information in writing being given to the circuit court that any person in the county is of unsound mind and on application that the fact may be inquired into, it shall be the duty of such court to enquire into the fact either by jury or otherwise and if it is found that such person is of unsound mind and incapable of prudently managing his affairs, the said court may appoint a guardian over the person, property and effects of such person of unsound mind for any term not exceeding one year, and make such order respecting the support, restraint and safe keeping of such person of unsound mind, as to them shall seem just and proper. And whenever the estate of such person of unsound mind shall be sufficient for the support of his family, (if any he have) and himself, the said person shall

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* So much of the 1—2—& 3 sections of this head as are contrary to the 4 & 5, are repealed.

Costs of trying the fact.

Mode of drawing support from the treasury.

be supported out of such estate, and the costs of such application if it is found that such person is of unsound mind and incapable of prudently managing his affairs, shall be paid out of his estate if he has any, otherwise out of the county treasury, and if the jury or the court should find that such person is of sound mind the costs of the application and trial shall be paid by the person making the application, and execution issue therefor as in other cases, but when the court shall be satisfied that the estate of such insane person is insufficient for the support of himself and family (if any he have or of himself if he has no family,) the court shall have power to make and order that such sum shall be paid to the guardian of such insane person out of the county treasury, as to them shall seem just and reasonable, and the treasurer on the application of such guardian is hereby required to pay the amount of such order, and the court shall take such security of the guardian as they shall think fit, and may require such guardian to come before them to give an account of the situation of such insane person's mind, or to give any other information respecting the keeping of such persons, the court shall think right. *L. M. T. Dec. sess.* 1816, *p.* 44, *passed 24th Jan. in force* 1*st March*, 1817.

Incapable of contracting.

Sec. 2. Such person of unsound mind as aforesaid shall not have power to enter into any contract without the consent of such guardian who is hereby authorised and required to declare all contracts entered into by such insane person, without his approbation, to be void and of no effect, and may bring suit for and recover any property which such person of unsound mind has disposed of without the consent of the guardian. *ib. p.* 46, *ib.*

Guardian to give notice of his appointment.

Sec. 3. It shall be the duty of the person appointed as guardian under this act, to give notice thereof within thirty days after his appointment in some newspaper printed in this territory for the space of four weeks next after such appointment, and also give notice thereof by posting up three advertisements in the township in which such person of unsound mind resides, at the most public place in such township. *ib. ib. ib.*

IMPROVEMENTS AND TITLES.

Certain claimants to lands

Sec. 1. Any person claiming lands in this territory by virtue of any grant, deed, warrant, concession, settlement right, or survey, and to which the right of the United States has been or may hereafter be relinquished, by said claim being confirmed, or granted by the board of commissioners, or by any act of congress, and such person being in possession and actual cultivation of the same, and shall hereafter have judgment of dispossession against him, rendered on action of ejectment or any other real action, brought by any person having a better title, such person being dispossessed as aforesaid shall be entitled to compensation for all valuable and lasting improvements which shall be hereafter made on said lands. *L. M. T. Dec. sess. 1815. p. 90, pass'd 23d, Jan. 1816.*

having judgt. of dispossession rendered against them to be compensated for improvement.

Sec. 2. It shall and may be lawful for any person claiming compensation as aforesaid, by himself, or attorney, at the time he files his plea to said action of ejectment or other real action, to give notice in writing, to the plaintiff or his attorney, that the defendant in such action claims compensation for all lasting and valuable improvements made on said premises, and it shall be the duty of said court if the parties will not agree on appraisers, to empannel a jury, and give judgment on their verdict as in other cases. But if the party shall agree on appraisers their agreement for that purpose shall be entered of record and the appraisers shall have power to go on the premises and appraise all valuable and lasting improvements, made on the land by the defendant subsequent to the passage of this act, having previously given each party timely notice of the time when they will proceed to make such appraisements, the said appraisers shall also have power to call and summon before them such witnesses as may be required by either party, and examine them on oath, touching any facts necessary to be ascertained, in making said report, which said report shall be returned to the next term of the court, after the order for appraisement is made, and if no objections are made to the report of the appraisers, at the term to which such return is made, either for improper conduct in the appraisers, or any illegality appearing on the face of the report, the same shall be final, and no writ of possession shall issue on any judgment on ejectment or other real action, where the defendant has claimed his compensation for improvements as aforesaid, the value of which has been ascertained as aforesaid, unless the plaintiff in such action shall deposit with the

Value of improvements how to be ascertained.

Appraisors may be appointed in certain cases.

Powers & duties.

Witnesses.

Report.

clerk of the court, where such judgment is on record, the defendants receipt for the amount of such appraisement, or the full amount of such appraisement in money. And the appraisers shall, before they enter upon the duties of their appointment, take and subscribe an oath or affirmation before some judge or justice of the peace, well and truly to appraise all valuable and lasting improvements made on the premises, described in their notification, at their just and true value in money. And the said appraisers shall have power and authority to call witnesses before them, and administer the necessary oath or affirmation for the ascertainment of any fact material in the enquiry. and assessment by this act directed, a certificate of which oath or affirmation shall be endorsed on the written notice of the appraisement, to be given to them by the clerk of the court, which notice of appraisement shall be returned to the clerk and be filed in his office. And the person claiming such compensation shall pay all costs of such appraisement. And each appraiser shall be allowed three dollars per day for his trouble. And in all cases where the improvements shall be made after the taking effect of this act, if the plaintiff in such action of ejectment, or other real action shall prove, by one or more competent witness or witnesses, that the plaintiff his agent or attorney, previous to the making of such improvements on said land, notified the defendant in writing of such better claim, then in that case, the defendant shall recover no compensation for his valuable improvements as aforesaid: *Provided*, Such notice shall contain the substance and particulars of the plaintiffs claim as nearly as may be. *ib*. *p*. 91 *to* 93, *ib*.

Appraisers to take oath.

May swear witnesses.

Costs.

Appraisers compensation

Defendant not to be compensated if duly notified of plff's claim.

Claims on which an action of trespass or ejectment may be supported.

Sec. 3. Any person claiming lands and tenements by virtue of any confirmation by the board of commissioners of land claims for this territory or by concession not exceeding one league square or by settlement right or other right, where such right or concession has been confirmed by the commissioners aforesaid, or by any act of congress, or where the same is held by deed, patent, entry, warrant or servey, being confirmed as aforesaid, or by any French or Spanish grant, warrant or order of survey, which prior to the tenth day of March one thousand, eight hundred and four, had been surveyed by proper authority, under the French or Spanish government and recorded according to the custom and usages of the country, altho' such person may not be in actual possession, but if the same shall have been actually surveyed by authority of the United States since the tenth day of march one thousand eight hundred and four, or by any proper officers, under the French or Spanish governments prior to the said tenth day of March one thousand eight hundred and four, such person shall and may maintain actions of ejectments or actions of tresspass in any court having jurisdiction of the same, and in all actions of ejectment where there is a verdict found for the plaintiff, the jury shall find, damages for mesne profits up to the time of rendering the verdict: *Provided,* That damages shall be given in no case for any rents or profits previous to the time such action of ejectment shall be brought, or previous to the time notice shall have been given, or previous to the time at which the plaintiff shall prove that the defendant had knowledge of his claim, according to the provisions of this act: *Provided also,* That this act shall not be construed so as to authorise the occupying claimant to be twice paid for his improvements; and in all cases where the occupying claimant is paid for his improvements by any other person than the proprietor of the better title such person shall have the same redress as is allowed the occupying claimant. *ib p.* 93–4, *ib.*

Damages in ejectment regulated.

Mesne profits.

Occupying claimant not to be twice paid for his improvement.

Compensation to be allowed to person who has paid for improvements.

Effect of notice to occupying claimant.

Sec. 4. Notice to an occupying claimant, shall bind all those claiming by, from or through such occupying claimant, to the extent of such claim. *ib. p.* 94, *ib.*

Courts not prevented from staying waste.

Sec. 5. Nothing in this act shall be so construed as to prevent any proper court from issuing a precept to stay waste, and ruling the party to give bond and security in such manner as such court may think fit. *ib: ib. ib.*

INCLOSURES.

What shall be deemed sufficient in law

Sec. 1. All fields and grounds kept for enclosures shall be well enclosed with a fence sufficiently close, composed of sufficient posts and rails, posts and pailings, palisadoes, or rails alone, laid up in the manner which is commonly called a worm fence, which posts shall be deep set and strongly fastened in the earth, and all fences composed of posts and rails, post and pailings or palisadoes or of rails in manner which is commonly called a worm fence, shall be at least five feet and six inches high, the uppermost rail of each and every pannel of the kind last named shall be supported by strong stakes, strongly set and fastened in the earth so as to compose what is commonly called staking and ridering; otherwise the uppermost rail of every pannel of such worm fence, shall be braced with two strong rails, poles or stakes, locking each corner or angle thereof; and that in all worm fences the worm of the same shall be at least one third of the length of the rails which compose the respective pannels thereof. *L. L. T. pt.* 1, *p.* 276—277, *pass'd* 7*th Oct.* 1808, *in force* 1*st Jan.* 1809.

Owners liable for damages by animals tresspassing.

Sec. 2. If any horse, gelding, mare, colt, mule or ass, sheep, lamb, goat, kid, or cattle, shall break into any person's enclosure the fence being of the height and sufficiency aforesaid, or if any hog, shoat or pig shall break into the same, the owners of such creature or creatures shall for the first trespass make reparation to the party injured, for the true value of the damages he shall sustain, and for every trespass afterwards, double damages to be recovered with costs before a justice of the peace, or in any court of record having cognizance of the sum demanded by the party injured:

How recovered.

3d offence animal may be killed.

Provided, That for a third offence from any of the beasts aforesaid, breaking into such enclosure, the party injured may kill and destroy the beasts so trespassing without being answerable for the same. *ib. page* 277 *ib.*

Duty of justice on complaint made.

Sec. 3. Upon complaint of the party injured to any justice of the peace, of the district [county,] such justice shall issue his order without delay to three householders, of the neighbourhood no way related to the party injured, nor interested concerning the trespass; reciting the complaint, and requiring them to view the fence where the trespass is complained of, and to take memorandums of the same, and their testimony in such case shall be good evidence on trial touching the lawfulness of the fence. *ib. p.* 277—278 *ib.*

If fence, &c. be in sufficient penalty for killing laming &c. animals trespassing.

Sec. 4. If any person damnified for want of such sufficient fence, shall hurt, wound, lame, kill or destroy or cause the same to be done, by shooting hunting with dogs or otherwise, any of the creatures in the second section of this act mentioned—Such person shall satisfy the owner of such creatures so hurt, wounded, lamed, killed or destroyed double damages with costs recoverable as aforesaid. *ib. p.* 278 *ib.*

INDIANS.

Sec. 1. If any person within this territory, except by permission from the superintendent of Indian affairs, shall sell, exchange, furnish or give to any Indian any spiritous, vinous or other strong liquor, and shall be convicted thereof, he or she shall forfeit and pay a sum not less than thirty nor more than one hundred and fifty dollars; or shall be imprisoned not exceeding thirty days nor less than ten at the discretion of the court. *L. L. T. pt.* 1st, *p.* 32—33, *pass'd* 26*th May* 1806.

Penalty for selling, exchanging or giving, &c. liquor to indians.

Sec. 2. The justices of the general quarter sessions of the peace [circuit courts,] within their repective districts [counties,] are hereby empowered, authorised and required to proceed against, and punish all persons offending against this act, and upon the testimony of one or more credible witnesses, or on the confession of the party accused to convict the prisoner who shall be found guilty as aforesaid. *ib. p.* 33 *ib.*

What court to have jurisdiction of such offences.

Sec. 3. Two thirds of the fines and forfeitures which shall accrue under this act, shall be paid to the treasurer of the territory; and the other one third to the use of the informant, except when the prosecution shall be first instituted in the behalf of the territory, in which case the whole shall be for the use thereof. *ib. ib. ib.*

Fines how appropriated.

INJUNCTION.

Sec. 1. The General [Superior] court, or any judge thereof in vacation,* may order and direct that writs of ne exeat or injunction may issue agreeably to the rules prescribed in this act.† *L. L. T. pt.* 2, *page* 8, *pass'd* 26*th Oct.* 1810, *in force* 1*st Jan.* 1811.

Writs of, by whom ordered.

Sec. 2. The judges of the circuit court respectively in his circuit in term time or in vacation shall have the same power to grant injunctions to stay the proceedings at common law on judgments, as the judges of the superior court or any of them have by law, and such injunction shall be returned to the next superior court in the circuit in which they may be granted. *L. M. T. Dec. sess.* 1816 *p.* 139, *pass'd* 1st *Feb. in force* 1st *July* 1817.

Also by judges of cir. cts.

Returnable to sup. ct.

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* *The court is always considered open for granting Injunctions—See Chancery Proceedings sec.* 17 *art.* 3.

† *Complainant must swear to his bill. ib. sec.* 17 *art.* 4.

Notice to be given of application for an injunction.

Service how proved

How much of Judgt to be enjoined.

Inj'n. releases error.

Comp't. to give bond.

Damages on dissolution.

Execution

Sec. 3. No injunction shall be granted to stay any proceedings at law, unless the party praying therefor shall first give reasonable notice in writing to the adverse party, if within the territory, or to his known agent or attorney, if he has any within the territory; but if the party does not reside within the territory, and has no known agent or attorney therein, then notice shall be put up at least ten days in the office of the clerk of the general [superior] court, which notice shall state the time and place of applying for such injunction.* The service of which notice shall be proven by one witness, at least, or the acknowledgment of the adverse party endorsed thereon; nor shall any injunction be granted to stay any judgment at law for a greater sum than the complainant shall shew himself equitably not bound to pay, and so much as shall be sufficient to cover costs. And every injunction when granted shall operate as a release to all errors in the proceedings at law that are prayed to be enjoined, nor shall any injunction be issued unless the complainant shall have previously executed a bond with sufficient surety to the defendant approved of by the court or judge granting such injunction and filed with the clerk in double the sum directed to be enjoined, conditioned for the payment of all money and costs due or to be due to the plaintiff in the action at law: and also all such costs and damages as shall be awarded against the complainant, in case the injunction shall be dissolved—If the injunction be dissolved in the whole or in part, the complainant shall pay six per centum on the whole or such part as may be released from the injunction exclusive of legal interest and costs. And the clerk shall issue an execution for the same when he issues execution upon such judgment.† *L. L. T. pt.* 2 *p.* 9–10, *pass'd 26th Oct.* 1810, *in force* 1*st Jun.* 1811.

No notice in term time.

Sec. 4. No notice shall be necessary in any case where application is made for an injunction in term time. *ib. ib. ib.*

No inj'n. for less than $ 60

Sec. 5. No writ of injunction shall be granted to stay proceedings under a judgment obtained for a sum not exceeding sixty dollars before a justice of the peace. *ib. p.* 12 *ib.*

Depositions.

Sec. 6. Depositions to support or dissolve an injunction, taken agreeably to law in other cases, may be read on the final hearing of the cause in which they may be taken. *ib. p.* 16 *ib.*

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* *If applied for in Term time, no notice necessary, post sec.* 4.

† *For detail of proceedings see Chancery Proceedings.*

INNS AND INN-KEEPERS.

See Taverns and Tavern-keepers.

INQUEST.

Sec. 1. Every coroner * as soon as he shall be notified of the dead body of any person, supposed to have come to his or her death by violence, or casually found, or lying within his district, [county,] shall make his warrant directed to the constable of the township,† where the dead body is found or lying, requiring him forthwith to summon a jury of good and lawful men, house-holders of the same township, not less than eighteen in all (so that twelve at least be present) to appear before such coroner at the time and place in his warrant expressed, and to enquire, upon a view of the body of the person then lying dead, how and in what manner and by whom he or she came by his or her death; and every such constable to whom such warrant shall be directed and delivered shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned and make return of the warrant with his proceedings thereon unto the coroner who granted the same. Every constable failing of executing such warrant, or of returning the same as aforesaid, shall forfeit and pay the sum of eight dollars, and every person summoned as a juror as aforesaid that shall fail to appear or make a reasonable excuse to the coroner for his non attendance within five days after the time appointed in the warrant, shall forfeit and pay the sum of five dollars, which fines shall be levied and collected by a warrant of any justice of the peace and to be applied to the use of the district [county.] *L. L. T. pt.* 1 *p.* 79–80 *passed* 3*d July* 1807.

Coroner to issue a warrant for jury

To whom directed.

Duty of constable.

Penalty on constable failing to do his duty.

On jurors failing to attend.

How recovered, &c.

Sec. 2. The coroner shall administer an oath or affirmation to at least twelve of the jurors who shall appear, to the foreman first in the following form. "You solemnly swear (or affirm) that you will diligently enquire and true presentment make, how, in what manner and by whom A. B. who here lies dead, came to his death;

Oath of jurors

Foreman.

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* *Justice of the peace in certain cases—post sec. 8.*

† *To whom to be directed in certain cases, see post sec. 8.*

And you shall deliver to me, coroner for this district [county,] a true inquest thereof according to such evidence as shall be laid before you and according to your knowledge." The other jurors shall swear or affirm in the following form: "Such oath (or affirmation) as your foreman hath taken, you and each of you shall well and truly observe and keep." *ib. p.* 80-1 *ib.*

Other jurors.

Sec. 3. The jurors being sworn, the coroner, shall give them a charge upon their oaths to declare, upon the death of the person, whether he or she died of felony, or mischance or accident, and if of felony who were principals and who were accessaries, with what instrument he or she was struck or wounded, and so of all prevailing circumstances, which may come by presumption, and if by mischance or accident whether by the act of man, and whether by hurt, fall, stroke, drowning or otherwise—Also to enquire of the persons who (if any) were present, the finder of the body, his or her relations and neighbours, whether he or she was killed in the same place, where the body was found, and if elsewhere by whom and how the body was brought thence. And if he or she died of his or her own act, then to inquire of the manner, means or instrument, and of all circumstances concerning it. *ib. p.* 81 *ib.*

Coroner to charge jury.

To enquire of bye standers, &c

Sec. 4. The jury being charged shall remain together and proclamation shall be made for any person who can give evidence to draw near and they shall be heard. *ib. ib. ib.*

Proclamation for witnesses.

Sec. 5. Every coroner shall be impowered to issue his warrant for witnesses, commanding them to come before him to be examined and to declare their knowledge concerning the matter in question, he shall administer to them an oath or affirmation in the form following: "You do swear (or affirm) that the evidence you shall give to this inquest concerning the death of A. B. here lying dead shall be the truth, the whole truth, and nothing but the truth. *ib. p.* 82 *ib.*

Warrant for witnesses.

Oath of witnesses.

Sec. 6. The evidence of such witnesses shall be taken down in writing and subscribed by them—And if it relate to the trial of any person concerned in the death then the coroner shall bind such witness by recognizance in a reasonable sum for their appearance at the next court of oyer and terminer [superior court] or quarter sessions [circuit court] to be holden within the district [county,] there to give evidence accordingly, and to commit to the common jail of the district

Testimony to be in writing.

Witnesses to be recognized &c. in certain cases.

[county] any witness or witnesses refusing to enter into such recognizance, and shall return to the same court the inquisition, written evidence and recognizance by him taken. And the jury having viewed the body, heard the evidence and made all the inquiry in their power shall draw up and deliver to the coroner their verdict upon the death under consideration, in writing, under their hands and the same shall be signed by the coroner. *ib. ib. ib.*

Coroner to return inquest

Verdict.

Sec. 7. Upon an inquisition found before any coroner of the death of any person, by the felony or misfortune of another he shall speedily inform one or more of the justices or judges of the same district [county] or one or more judges of the general [superior] court, whose duty it shall be forthwith to issue their process for the apprehension, examining and securing for trial of such person or persons, killing or being any way instrumental to the death. *ib. p.* 82—83 *ib.*

Proceeding where death if found by felony or misfortune of another.

Sec. 8. And if the coroner by sickness or other causes is not able to take the inquest provided for by this act, or if the coroner resides at a greater distance than forty miles from the place where the dead body is found lying, any justice of the peace, or judge of the court of common pleas of the proper district [county] is hereby authorised and required to take the inquest, and perform all and singular the duties hereby enjoined on the coroner. *ib. p.* 83 *ib.*

Justice of the peace to take inquest in certain cases.

Sec. 9. And if the constable of the proper township is unable to execute the duties required of him by this act, the coroner, justice or judge may direct his warrant to any other house-holder of the township who shall perform the duties of a constable under the same penalties and to be entitled to the same fees as a constable. *ib. ib. ib.*

Who to do constables duty in certain cases.

INSOLVENT DEBTORS.

Sec. 1. Any person who is now or may hereafter be committed to prison, unless under criminal charge, shall be permitted to petition any two justices of the peace of the proper county, or either of the judges of the superior or circuit court to be liberated from imprisonment, and the said justices or judge shall in hearing and determining on said petition, be governed by the provisions of the above recited act, and agreeably to the provisions of an act, supplementary to an act

To whom application to be made for discharge.

entitled an act concerning insolvent debtors.* And all proceedings had before the said justices or judge shall be as valid in law as if the same were had before any judge of the court of common pleas,† any thing in the above recited act to the contrary notwithstanding. *L. M. T. Dec. sess.* 1814, *p.* 76, *pass'd* 20*th Jan*, 1815.

Warrant to be issued.

Sec. 2. *Any person committed to prison, unless under a criminal charge, shall be permitted to petition any judge of the court of common pleas of the proper district*‡ who by his warrant shall cause the sheriff or jailer to bring the prisoner before the said judge within five days next succeeding the date of the warrant. *L. L. T. pt.* 1 *p.* 248 *pass'd* 16*th Oct.* 1807.

Creditors to be notified, &c. how.

Sec. 3. It shall be the duty of the said insolvent debtor to cause a notice in writing to be served on his creditors, their agents or attornies, and in case of the absence of the creditor, or his having no agent or attorney within the district [county,] a notice shall be left with the clerk of the court, within the district where the prisoner is confined, which notice shall inform the creditors that on a certain day application will be made by the prisoner to be permitted to take the benefit of the act concerning insolvent debtors. *ib. p.* 249 *ib.*

Notification where cr. resides out of the county.

Sec. 4. And when a creditor shall not reside within the district the most public notice of the intended application shall be given either by a publication for two weeks in some newspaper within this territory, or by causing an advertisement to the same effect to be posted up at the court house door of the district [county] for at least two weeks, in case there is no newspaper in the territory. *ib. p.* 291, *pass'd Nov.* 1*st* 1808.

Not to be discharged until, imprisoned 20 days

Sec. 5. No person shall be discharged under the act to which this is a supplement§ until he shall have remained in prison at least twenty days. *ib. ib. ib.*

Inventory of property to be made, and delivered to judge or justices on oath.

Sec. 6. It shall be the duty of such insolvent debtor to deliver to the judge [or justices] before whom he is brought an inventory signed by himself of all his property, real personal and mixed, to be disposed of for the benefit of his creditors. And it shall be the duty of such judge [or justices] to administer to the insolvent debtor the following oath, to wit: "I. A. B. do solemn-

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**An act concerning Insolvent Debtors—the provisions of which will be found post sections* 2—3—6—7—9—10—12, *and an act supplementary thereto see post sections* 4—5—8—11—13.

† *See post sec.* 2.

‡ *See ante sec.* 1.

§ *An "act concerning insolvent debtors." See note to sec.* 1, *Ante.*

"ly swear (or affirm as the case may be) that the inventory now delivered, and by me subscribed doth contain to the best of my knowledge, remembrance, and belief a full, just, true and perfect account and discovery of all the estate, goods and effects unto me in any wise belonging, and such debts as are unto me owing, or to any person in trust for me, and of all securities and contracts whereby any money or property may hereafter become payable or any benefit or advantage accrue to me or to my use, or any person or persons in trust for me, and that I or any person or persons in trust for me, have no lands, money, stock or other estate, real or personal in possession, reversion or remainder except those contained within this inventory; and that I have not used any device or artifice to cover any of my property from my creditors either by sale, mortgage trust or transfer of any description. *ib. p.* 249-250, *pass'd* 16*th Oct.* 1807.

Inventory to be lodged with clerk.

Sec. 7. It shall be the duty of the judge [or justices] to cause such inventory to be lodged with the clerk of the district [county] where the oath is taken for the information of the creditors of such insolvent debtor. *ib. p.* 250, *ib.*

To deliver up all his property, &c.

Sec. 8. It shall be the duty of every petitioning debtor to deliver or cause to be delivered previous to his discharge, to the sheriff of the proper district [county,] all his property, and also to give every information he possesses necessary to obtain his property, or any part thereof, together with his books, title papers and evidences of debts of every kind, and the said sheriff shall certify the same to the judge to whom the debtor has petitioned. *ib. p.* 289, *pass'd* 1*st Nov.* 1808.

To be liberated.
Never to be again arrested for same debts
But property liable.

Sec. 9. After delivering such inventory and taking such oath* the judge shall command the sheriff or jailer forthwith to set the prisoner at liberty, and he shall never be subject to *arrest* on account of such debts afterwards: But the creditor may at any time sue out process of executon against the estate which such insolvent person may thereafter acquire or be possessed of. *ib. p.* 251, *pass'd* 16*th Oct.* 1807.

Property books, &c how disposed of.

Sec. 10. The property, books, title papers and evidences of debts so delivered to the sheriff shall be kept by such sheriff in trust and for the use of the creditors of the said debtor or delivered by him to the trustee that may be appointed by the creditors and disposed in such manner as is provided by the fifth section of the act to which this is a supplement* *saving to the wife of the insolvent debtor*† and to all other persons their legal rights. *ib. p.* 289, *pass'd* 1*st Nov.* 1808.

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* *And delivering up his property, See ante sec.* 8.

Property to be vested in sheriff or trustee,

Sale to be made.

Except wearing apparel, &c.

Sec. 11. The lands tenements and also all goods, chattels, claims debts and demands contained in such inventory, or such use right, interest and title as such insolvent debtor shall have in the same, which he may lawfully dispose of, *reserving to the wife of such debtor her right of dower*,‡ shall be vested in the sheriff, or such person as a majority of the notified creditors may designate, and such sheriff or trustee shall sell and convey the same to any person for the best price that can be had for the same, and he shall pay the money arising from such sale to the aforesaid creditors in just proportions according to the amount of their respective claims; saving to such debtor his own and the necessary wearing apparel for his wife and children, and his utensils of trade or occupation, and all such arms and accoutrements as every militia man is required to keep by law.

Notice of lequidation and adjustment to be given.

And to prevent fraudulent and unjust claims against the estate of such insolvent debtor, it shall be the duty of the sheriff or trustee to give notice to the aforesaid creditors, and also to the insolvent debtor by a notice in writing or in the most public manner that on a day certain he will proceed openly to adjust and liquidate the demands against the estate of such insolvent debtor, and as soon as practicable proceed to a fair and just dividend. *ib. p.* 250–251, *pass'd* 16*th Oct.* 1807.

Debts due to dr. may be sued for, &c.

Expences and compensation allowed.

Sec. 12. It shall and may be lawful for the sheriff or trustee to commence suits and recover the amount from any persons indebted to the insolvent debtor. And the said sheriff or trustee may retain in his hands all reasonable expences to which he has been exposed in the management of the estate of the insolvent debtor, and such other compensation as the court of common pleas [circuit court] of the district [county] where the prisoner was confined may deem just. *ib. p.* 251, *ib.*

Proceedings on suggestion of a creditor that debtor has acted

Sec. 13. If any creditor at any time within one year after the application of such debtor shall alledge on oath and in writing to the general [superior] court or to the court of common pleas [circuit court,] within fraudulently, &c.

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* *Post sec.* 11.

† *See note to sec.* 11.

‡ *So much of this section as allows to the wife of an insolvent debtor her right of dower, is repealed. L. M. T. Dec sess.* 1814, *p.* 77, *pass'd* 20 *Jan.* 1815.

Dr. swearing falsely, punished as for wilful perjury

And deprived of the benefit of this act.

whose jurisdiction such debtor may be found, that such debtor had at the time of his application, directly or indirectly conveyed, lessened, concealed or disposed of any part of his property, rights or credits, with intent to give a preference to any creditor or creditors, or any security; the said court shall thereupon order notice of such allegation to be given in writing to the debtor, and upon his appearance before them, or on his neglect to appear, after proof that notice has been served, the said court shall without delay, direct an issue or issues to be tried by a jury in a summary way, without the form of an action, to determine the truth of the same. And if upon the answer to the said interrogatories, or upon the trial of the issue or issues, such debtor shall be found guilty of any fraud or deceit towards his creditors or of having given any preference as aforesaid, he shall be precluded from any benefit under the law to which this is a supplement.* And in case such debtor or any other testifying either for against him shall at any time thereafter be convicted of falsely, wilfully and corruptly swearing or affirming to any matter or thing in virtue of this act or of the act to which this act is a supplement, shall suffer as in case of wilful perjury, and upon such conviction of the debtor, he shall be forever precluded from any benefit under the act to which this act is a supplement. *L. L. T. pt. 1, p. 290–291, pass'd 1st Nov.* 1808.

INTEREST.

Rate of to be 6 per cent per annum.

Sec. 1. Creditors (excepting as herein after specified) shall be allowed to receive interest at the rate of six per centum per annum for all monies after they become due, on bond, bill, promisory note, or other instrument in writing, on any judgment recovered in any court of record now or hereafter to be established within the territory, from the day of signing judgment until effects be sold, or satisfaction of such judgment be made; likewise on money lent; on money for the forbearance of the payment whereof an express promise hath been made for the payment of interest; on money due on the settlement of accounts, from the day of liquidating accounts between the parties, and ascertaining the balance; on money received to the use of another and retained without the owners knowledge, and on money withheld by an unreasonable and vexatious delay of payment. *L. L. T. pt.* 1, *p.* 330–331, *pass'd 5th Nov.* 1808.

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* *See note to sec. 1*

No person to take more than 6 per ct. per annum.

Sec. 2. No person or persons shall on any contract which shall be made, directly or indirectly, take for the loan or use of money, or other commodity, above the value of six dollars for the forbearance of one hundred dollars, or the value thereof, for one year, and so proportionably, for any greater or lesser sums, any law custom or usage to the contrary notwithstanding.

Proviso. 10 per ct. if specially agreed upon.

Provided, That where the parties expressly agree, that any obligation shall bear interest not exceeding the rate of ten per centum, shall be deemed legal, any thing in this section to the contrary notwithstanding; And the several courts in this territory are hereby required to give judgment accordingly. *ib. p.* 331, *ib.*

Person taking more than legal interest.

Defendant may set off premium.

Plaintiff to have judgment for residue.

Sec. 3. If any person shall directly or indirectly receive any money, obligation, promise, or other commodity by way of premium or any other name, by which the same may be called or understood, to the end of obtaining any higher rate of interest than six per centum per annum for the loan or use of any money or any other commodity (except as herein before provided) on any contract, which shall hereafter be made; and shall institute an action for the recovery of the money due on or by reason of the breach of such contract so as aforesaid made; it shall be lawful for the defendant in such action in pleading to set forth the special matter in bar of so much of the real sum of money, or price of the commodity, actually lent, advanced or sold, as shall be the amount of the aforesaid premium or sum, actually received. And if the plea of the defendant is confessed or adjudged good on *demurrer*, or supported by the verdict of a jury then and in every such case the plaintiff shall recover no more than what remains of the aforesaid sum of money, or price of the commodity actually lent, advanced or sold, after deducting the said premium without any interest on the principal. And if a residue is still left, the plaintiff may enter judgment for the same, and have execution with interest and costs accruing from the signing of the judgment: *Provided always,* That if the premium or usurious interest, and costs exceed the principal or real sum of money or the price of the commodity actually lent, advanced or sold, the excess shall be deemed a debt of record, and on motion of the defendant made in open court such defendant may enter judgment for the same with costs at the next or any subsequent term, within a year and have execution accordingly. *ib. p.* 332–333, *ib.*

JOINT AND SEVERAL ACTIONS.

Sec. 1. Whereas it is a rule of common law, that in case of the death of a joint obligor, the debt can never survive against his heirs, executors or administrators, which rule frequently is unjust and oppressive to the surviving obligor or obligors; to remedy which: *Be it enacted,* That from and after the passage of this act, in case of the death of one or more joint obligor or obligors the joint debt or contract shall and may survive against the heirs, executors and administrators of the deceased obligor or obligors as well as against the survivor or survivors, and when all the obligors shall die, the debt or contract shall survive against the heirs, executors and administrators of all deceased joint obligors, and in all cases of joint obligations and joint assumptions of copartners or others hereafter to be entered into, suits may be brought and prosecuted on the same, in the same manner as if such obligation or assumptions were joint and several, and in all cases where there shall be a joint judgment against two or more, and one or more of such judgment debtors shall die before such judgment is satisfied, said judgment shall survive against the heirs, executors and administrators of such deceased debtor or debtors, and there may be a *scire facias,* to revive the said judgment against such representatives or actions of debt may be brought on such judgments against such representatives: *Provided,* That the creditor shall have only one satisfaction for his debt. And in all cases hereafter where the obligor or obligors, maker or makers of any note, bill, bond or other contract, reside in different counties, it shall be lawful for the plaintiff or plaintiffs to institute a suit against all or as many of them as he may think proper, and it shall be lawful for the clerk of the court in which such suit shall be instituted to make out a separate summons, or capias as the case may be, against the person or persons residing in a different county, directed to the sheriff of the county or counties where such person or persons reside, and endorse on such writ that it is a counterpart of the writ issued, where such suit is commenced; and in all cases where

Death of one or more joint obligors, the joint debt, &c. shall survive agt. heirs, &c.

Joint judgment.

Where there are several defendants residing in different counties process how to issue.

Several defendants.

Default.

One or more of several defendants.

One or more of several defendants being non residents

May be made parties after judgment.

there shall be several defendants to any suit or action, some of whom are summoned or taken and others not taken, the plaintiff shall be at liberty to proceed against those summoned or taken, whithout regard to those not summoned or taken, or may continue his cause and award *alias* writs till another term, at which time he shall proceed against those appearing; and in case there be several defendants, and some shall make default, the plaintiff may proceed against those who appear, and take judgment by default against the defaulters and execute a writ of enquiry, but shall have but one satisfaction; and in case any joint obligor or obligors, maker or makers of any note, bill, bond or other contract are not resident in the territory, the plaintiff or plaintiffs may file a declaration against the defendant or defendants resident in any county in the territory suggesting therein that the other defendant or defendants are not resident in the territory, and may proceed to judgment against the said defendants according to usage and practice of the court; and after such judgment hath been obtained, the plaintiff or plaintiffs may by a writ or writs of *scire facias*, cause the defendant or defendants so non residents, to be made parties to the said judgment, unless such defendant or defendants show good and sufficient cause by plea or otherwise, why such judgment should not be entered against him, her or them; and the defendant or defendants made parties to the judgment as aforesaid, shall be subject to the same final process as though he, she or they had been duly served with mesne process, and had thereupon appeared and received a declaration, and made defence, or suffered judgment by default to be entered against him, but the plaintiff or plaintiffs shall have but one satisfaction. *L. M. T. Dec. sess.* 1815, *p.* 18 *to* 21, *pass'd* 10*th Jan.* 1816.

JUDGES.

Of Superior Courts, See Organic Law, chap. 1 *sec.* 10, *chap.* 2, *sec.* 1 *& chap.* 3, *sec.* 3. *Of Circuit Courts, See Circuit Judges.*

JUDICIAL PROCEEDINGS.

Style of writs.

Sec. 1. All writs issued by any court in this territory shall run in the name of the United States of Amer-

When to be returnable.

ica and bear test in the name of the presiding judge,* and shall be sealed with the judicial seal of the said court, and made returnable to the next term after the date of such writs.† *L. L. T. pt.* 1 *p.* 123, *pass'd* 3*d July* 1807.

Test of process in circuit court.

Attornies may receive blanks

Sec. 2. All writs and process hereafter to be issued by any clerk or judge of the court of common pleas [circuit court,] shall bear test in the name of the clerk or judge of the court of common pleas who shall issue the same; And it shall be lawful for any attorney at law practising in the courts of this territory to procure blank writs and subpœnas, with the seal of the several courts thereto annexed from the several clerks' offices within this territory, upon the payment of the tax and legal fees thereon, cause the same to be filled up and writs to issue according to law. *L. M. T. July sess.* 1813, *p.* 59, *pass'd* 20*th Aug. in force* 1st *Sep.* 1813.

Test of writs in superior courts.

Attornies may receive blanks

Sec. 3. All writs and processes issuing from or returnable to the superior court shall bear test in the name of one of the judges of the superior court or of the clerk of said court, of the county [circuit] in which the same shall have been issued and be made returnable to the said court to be holden in said county [circuit] and shall be made returnable as follows, to wit: before the judges of the superior court to be holden in the county (naming the county place and time when such court is to be holden) and shall be under the seal of the said court as is heretofore provided and signed by the clerk thereof. *Provided however,* That it shall and may be lawful for any attorney at law authorised to practice in this territory, to procure blank processes from the respective clerks, without first filing a declaration in said office and cause the same be filled up and issue according to law. *ib. Dec. sess.* 1813 *p.* 102—3 *pass'd* 19*th Jan. in force* 1st *June* 1814.

Writs when to be returnable in certain cases.

Sec. 4. In every suit brought within the fifteen days immediately preceding the term of the court, in which it is instituted, the writ shall be made returnable to the second term of said court next ensuing the date of the writ. *L. L. T. pt.* 1 *p.* 337 *pass'd* 7*th Nov.* 1808.

Writ to be paid for at the time of issuing.

Sec. 5. In all cases where any person shall apply for an original writ from the clerk of any court of this territory, the legal fees for issuing the same shall be paid to the clerk at the time the writ is issued or deli-

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* *See also sec.* 2.

† *See also post sec.* 4.

Non residents to file security for costs.

vered :* And every person who shall not be a resident within this territory shall before he institutes any suit in the courts of this territory file or cause to be filed a bond with sufficient security, with the clerk of the court where his suit is instituted, for the payment of all costs which may accrue in said suit: And if at any time after the commencement of a suit by a resident, he should become non-resident of this territory, it shall be the duty of such suitor, to file his bond as aforesaid, and it shall be lawful for the defendant, or the clerk or sheriff in the court, in which such suit is brought to give at least one month's notice to the plaintiff as aforesaid or his known agent or attorney that a motion will be made to dismiss the said suit from the docket, provided bond and security for costs is not filed; and in case of neglect or refusal to comply with such notice, it shall be the duty of every court on motion to dismiss such suit. *ib. p.* 336—337, *pass'd 7th Nov.* 1808.

Pl'ff. in certain cases to give security for costs.

Sec. 6. In all cases where the plaintiff resides out of this territory, in *qui tam* actions, in suits on administration bonds, office bonds, and the defendant making affidavit that he has a just cause of defence against the whole of the plaintiff's demand, the court in which such suit is commenced may grant a rule that the plaintiff give security for costs at the next term, and for want of such security, the court may on motion, order judgment of non-suit to be entered. *ib. p.* 99—100, 3*d July* 1807.

Certain cases in which a plaintiff shall file security for costs.

Sec. 7. If at any time a court should be satisfied that a plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, it shall be lawful for the court to direct that a notice should be served on such plaintiff, his attorney or agent requiring him to file a bond with security for costs on default of which his suit shall be dismissed.

Or sue as a pauper.

But it shall be the duty of such court if the plaintiff shall satisfy them of his incapacity to prosecute his suit, to declare him a *pauper*, and permit his suit to proceed as such. *ib. p.* 338 *pass'd 7th Nov.* 1808.

Who may sue as poor persons and how.

Sec. 8. Every poor person who shall have cause of action against any person in this territory shall have, by the discretion of the court before whom he would sue, *writs original* and *writs* of subpœna according to the nature of the case, nothing paying for the same. And the said court shall direct the clerk to issue the necessary process, and shall assign to him counsel learned in the law; and appoint all other officers requisite and necessary to be had for the speed of said suit, who shall do their duties without any reward for their counsels, help and business in the same. *ib. page* 112 *pass'd 3d July* 1807.

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* *And tax on Writ—See Revenue, sec.* 8.

How minors may sue.

Sec. 9. In every case where any person under the age of twenty one years may sue, the next friend shall be admitted to sue for them.* *ib. ib. ib.*

In what cases summons shall issue.

Sec. 10. The original process in all actions of slander, trespass, assault and battery, action on the case for trover, or other wrongs, and personal actions, except such as shall hereafter be particularly mentioned, shall be a writ of *summons* signed by the clerk or one of the judges of the court from which such writ issues, and sealed with the seal of such court, directed to the sheriff of the district [county,]† commanding him to summon the defendant to appear at the next court, to answer the complaint of the plaintiff. If the plaintiff shall in any of the before mentioned cases issue any other process whereby the defendant may be held to bail, the court shall abate the writ and allow the defendant his costs, and four dollars to be paid by him or them who procured such writ, and to be recovered by execution as in other cases. *Provided always*, That any judge of any of the courts of this territory when upon proper affidavit or affirmation it shall appear to him proper that the defendant be held to bail in any of the before mentioned cases; such judge may make an order, whereupon a writ of *capias ad respondendum* may issue,‡ such order being filed in the clerk's office. And if the defendant shall consider himself aggrieved by the order of such judge he may appeal to the court at the next term, and if the court shall overrule the judge's order the bail bond shall be cancelled and the defendant's appearance accepted.—The service of a summons shall be by reading the writ, declaration, petition or statement to the defendant, or delivering him a copy thereof, or leaving such copy at his usual

If capias be issued to be abated & pl'ff pay penalty.

Judge, &c. may order capias.

Summons how to be served

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* *See also Title, Minors Orphans, and Guardians, sec. 1, where the method of allowing minors to sue by next friend and their liability for costs, are more fully detailed.*

† *How to issue where defendants reside in different counties, &c. See Joint and Several Actions, sec.* 1.

‡ *See also post sec.* 11.

When

place of abode with some person of the family above the age of fifteen years and informing such person of the contents thereof, such service to be at least fifteen days before the return day of the writ. *ib. p.* 101-2 *ib.*

Power of ordering a capias on affidavit vested in the circuit judges clerks &c.

Sec. 11. The circuit judges and several clerks of the superior and circuit courts in this territory, are hereby invested with all the powers heretofore given by an act entitled "an act establishing courts of justice and regulating judicial proceeding" passed by the governor and judges of the late territory of Louisiana, the third day of July eighteen hundred and seven, to the judges of the courts of common pleas established by that act, so far as relates to taking affidavits and making orders thereon, for the purpose of holding to bail* which orders for holding to bail when made by the clerk of the court shall be subject to the revision of the said superior or circuit courts in term time and to be by them set aside if deemed unjust or improper. *L. M. T. Dec. sess.* 1814 *page* 83, *pass'd 21st Jan. in force* 15*th Feb.* 1815.

Capias in what cases to issue.

Amount of bail to be indorsed

Capias how to be served.

Bail bond.

Sec. 12. In all actions of debt founded on any judgment, writing, obligatory bill, or note in writing, for the payment of money or other property, in actions of covenant, and in actions on the case, where the plaintiff makes affidavit or affirmation of a real subsisting debt and of the sum in which he verily believes the defendant ought to give bail to secure such debt and costs (which affidavit may be taken before any justice of the peace in this territory, and before the clerk of the court from which the writ is to issue and filed in his office) it shall and may be lawful for the plaintiff to sue out of the clerks office of the proper court a writ of summons as is prescribed in the preceding section* or a writ of *capias ad respondendum* on which *capias* the true species of action and the sum for which bail is demanded shall be endorsed on such writ. It shall be the duty of the sheriff to whom such writ of *capias ad respondendum* may be directed, to take the defendant's body, and commit him to the common jail of the district [county,] or to take a bond of the defendant with sufficient sureties, in the sum endorsed on the writ, conditioned that the defendant shall be and appear at the term of the court to which the writ is returnable, and that if judgment be given at that or any subsequent

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* *Ante sec.* 10.

Return,

Sheriff failing to return bail bonds or taking insufficient bail.

Questions concerning sufficiency of bail.

No person to be arrested out of the county in which he resides.

term against him that he will pay the debt, or damages, as the case may be, and costs, and surrender himself in execution, or that the sureties will do the same for him,* which bond the sheriff shall return together with the writ in the office of the clerk of the court from which the writ issued on the return day in the writ named: And if the sheriff does not return the bail bond, or the bail bond returned shall be adjudged insufficient by the court, and the defendant shall fail to perfect his bail if ruled thereto; in such case the sheriff shall be made *co-defendant* and may defend the suit, and shall be subject to the same judgment and recovery as the defendant might, or would have been subject to. *Provided*, That all questions concerning the sufficiency of bail shall be made and determined by the court during the term to which the writ was made returnable. *And provided also*, that in civil cases no person shall be held to bail in a district in which he does not reside.† And if any person shall be arrested and imprisoned or held to bail in a civil case in a district [county,] in which he is not an inhabitant, he or she may be discharged from his or her imprisonment or bail and the suit may progress as if bail was not required. *L. L. T. pt.* 1 *p.* 102 *to* 104 *pass'd* 3*d July* 1807.

Judge may reduce sum for which bail is demanded.

Notice to be given to pl'ff. Appeal.

Sec. 13. It shall be lawful for any judge of the court in vacation, out of which a writ of capias ad respondendum issues, on the application of the defendant, or his agent, to inquire into the causes of action and reduce the sum for which bail is demanded, if it shall appear to the judge that the sum for which bail is demanded is greater than the cause of action requires; *Provided*, reasonable notice of such application be given to the plaintiff or his attorney; *And provided also*, That either party be permitted to appeal at the next term of the court from the decision given by the judge. *ib. pt.* 2 *p.* 16–17 *pass'd* 30*th Oct.* 1810.

Sheriffs remedy agt. bail.

Sec. 14. In all cases where the bail shall be adjudged insufficient and judgment against the sheriff, he shall have the same remedy against the bail as against the estate of the defendant. *ib. p.* 104 *pass'd* 3*d July, in force* 1*st Sept.* 1807.

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* *Bail may surrender principal.—Post sec.* 77, *their remedy against principal post sec.* 78.

† *Except where defendants reside in different counties, See ante title Joint and Several Actions.*

Who shall not be bail.

Sec. 15. No attorney or counsellor at law, sheriff, coroner, under sheriff, or other persons concerned in the execution of process shall be permitted to become bail in any civil case nor in any criminal case without obtaining leave from the court. *ib. p.* 124 *ib.*

Persons not to be arrested in a county in which he does not reside nor summoned

Unless, &c.

Sec. 16. No person being an inhabitant of this territory shall be arrested or held to bail in any civil action, except it be in the county in which he resides; nor shall any person as aforesaid be summoned for trial in any county than that in which he is an inhabitant unless he shall be found in the county where the plaintiff resides at the time of serving such process* *except the inhabitants of the county of Arkansas. And all persons arrested and summoned for trial in the county of Arkansas in matters cognizable in the superior court shall be brought to trial before the court of the county of Washington at the place of holding the superior court therein.*† *L. M. T. Dec. sess.* 1813 *p.* 105.

Judgments may be confessed before clerk, &c.

Sec. 17. The clerks of the several courts of record shall have power and authority to sign all judgments confessed by any defendant in his proper person before them, to take bail in all actions in their respective courts, to take acknowledgments of satisfaction of judgments entered on the records of said courts, and to administer oaths and affirmations respectively in conducting the business of their respective offices in as full a manner as any judge of the said courts might or could do. *L. L. T. pt.* 1 *p.* 112—113, *pass'd 3d July, in force 1st Sept.* 1807.

Declaration when to be filed.

Writ to be indorsed on.

Sec. 18. It shall be the duty of every person issuing out an original writ, to file by himself or agent with the clerk of the proper court, a declaration or petition to the court or other statement in writing containing the true nature of his, her or their demand or complaint, *and if upon any instrument in writing or upon account, such declaration petition or statement shall be accompanied with a copy of such writing or account.*‡ On presenting such declaration petition or statement in the clerk's office, it shall be the duty of the clerk to endorse thereon an order to the sheriff, in the nature of a summons or *capias* according to the nature of the demand or complaint, and according to the provisions of this act;* *Provided*, There shall be at least fifteen days between the execution of such writ and the term to which it is made returnable. It shall be the duty of every defendant to plead to the merits on or before the third day of each term; and if any part of the pleading is adjudged bad, immaterial or insufficient, the party shall be required to plead to the merits *instanter*.

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* *And except where defendants reside in different counties—See Joint and Several Actions.*

† *The clause in Italic is presumed to be repealed by Organic Law, chapter 2.*

‡ *The words in Italic are repealed, see post sec.* 19.

When writ to be served.

Def't when to plead.

Pleading found insufficient, &c.

2. And if the plaintiff shall conceive that the matter contained in the defendants plea requires time to reply to, he may continue his cause till the next term or proceed to trial.†

Continuance.

3. It shall be the duty of the court to try each cause in which an issue is made at the first term, provided they are of opinion the very right of the cause can be obtained.†

Causes when to be tried.

4. If the defendant fails to appear and plead, the plaintiff may cause judgment to be entered up against him at any time during the last day of the term, which judgment shall be final.

Judgment by default.

5. Pleadings may at any time be amended before a jury is sworn, provided no delay is produced thereby, nor either party surprised by the amendment.

Amendment.

6. If the plaintiff continues his cause until the second term, he shall be bound to be ready for trial at that time when the cause is called, having within fifteen days of the court served the defendant or his attorney with a copy of his replication and if the defendant should *demur* to the replication the *demurrer* shall be disposed of when the cause is called and pleadings to the merits required *instanter*, and the cause be tried. *ib. p.* 100—101 *ib.*

Pl'ff must be ready for trial at 2d term.

Replication.

Demurrer to replication.

Sec. 19. It shall not be required of any party to a civil suit in any court within this territory to annex a copy of any instrument in writing or account to the declaration, petition or statement, or to file the same with the clerk. If either party shall be desirous to examine a paper, which it is believed, the other party will offer in evidence, at the trial of the cause, such party may at any time before the trial, demand of the party or his attorney a copy of such paper, and unless the copy is furnished within a reasonable time, after the demand is made the paper shall not be permitted to go in evidence at the trial. The party requiring such copy shall pay the same fees for copying as are

Acc'ts & other writings need not be annexed to decl'n.

Adverse party may have a copy if demanded

and paying fees.

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* *Ante sec.* 10 *to* 12.

† *See post sec.* 34-35.

allowed to the clerk of the court for making exemplifications of records. *ib. pt.* 2, *p.* 16, *pass'd 30th Oct.* 1810.

Parties may plead personally or by attornies.

Sec. 20. In all courts of record in this territory, the parties may plead and manage their own causes, personally, or by attornies at law permitted to appear therein. *ib. pt.* 1 *p.* 99 *pass'd 3d July* 1807.

Deft. in custody may plead.

Sec. 21. Where the defendant is in custody for want of bail he may make his defence and the plaintiff may proceed in the same manner as is herein provided for. *ib, p.* 104 *ib.*

Several pleas admitted.

Sec. 22. The plaintiff in *replevin,* and the defendant in all other actions may plead as many several matters whether of law or fact, as he shall think necessary for his defence. *ib. p.* 113 *ib.*

Plea in abatement to be on oath.

Sec. 23. No plea in abatement shall be received unless the party offering the same shall prove the truth thereof by oath or affirmation as the case may require.

Writings, &c. declared on admitted.

2. Wherever any suit shall be commenced in any court of this territory, founded on any writing whether the same be under seal or not, the court before whom the same is depending, shall receive such writing in evidence of the debt or duty, for which it was given, and it shall not be lawful for the defendant, in any such suit to deny the execution of such writing unless it be by plea, supported by the affidavit of the party, putting in such plea; which affidavit shall accompany the plea and be filed therewith at the time such plea is filed.

Unless denied in plea on oath.

Scroll of equal force with seal.

3. Any instrument in writing to which the person executing the same shall affix a scroll by way of seal, shall be adjudged and holden to be of the same force and obligation as if it were actually sealed. *ib. p.* 105—106 *ib.*

Pleadings.

Form of, not regarded.

Sec. 24. All pleadings containing sufficient matter to bring the merits of the cause at issue may be admitted without respect to form.

Entered in open court.

2. All pleadings entered in open court may be entered by the clerk on the minutes.

In vacation.

3. Pleadings filed in vacation shall be signed by the party or his attorney.

Time of filing to be endorsed.

4. The clerk shall endorse on every declaration and plea the day on which the same are filed in his office.

Causes removed by certiorari to be tried 1st term.

5. In all causes removed into the general [superior] court by *appeal, certiorari,* or *habeas corpus,* the trial, and final judgment shall be given at the term to which such removal is made returnable, unless sufficient cause

be shown to the said court to induce them to grant further time, for the trial of such cause.

Rules of practice.

6. Rules of practice adopted by the general [superior] court, shall be adopted by the several courts of common pleas and quarter sessions [circuit courts] as far as the same may be practicable.

Writs of enquiry.

Judgment by default.

7. All writs of enquiry shall be executed at the next succeeding term after an enterlocutory judgment is given. And in all cases where the demand is liquidated and reduced to writing the clerk may upon judgment by *default*, calculate the principal and interest really due and endorse the amount on the execution. *ib. p.* 106–107, *ib.*

Process pleading or Judgt. not to be abated, &c. for want of form.

Sec. 25. No writ, declaration, return, process, judgment, or other proceeding in any civil cause, in any of the courts of record in this territory, shall be abated, arrested, quashed, or reversed for any defect or want of form, but the courts respectively shall proceed to give judgment according to [as] the right of the cause and matter in law shall appear to them, whithout regarding imperfections, defects or want of form, in such writ, declaration or other pleading, return, process, judgment or cause of proceeding whatsoever, except those only in cases of *demurrer*, which the party *demurring* shall specially set down as the cause thereof. And the said courts respectively shall and may by virtue of this act, from time to time amend all and every imperfections, defaults, and want of form, other than those only which the party *demurring* shall express as aforesaid, and may at any term permit either of the parties to amend any defect in the process or pleading upon such condition as the said courts respectively shall in their discretion by their rules prescribe. *ib. p.* 108, *ib.*

Amendment of pleading, &c.

Suits not to be removed except, &c.

Sec. 26. No indictment or plea depending or cognizable in the courts of common pleas or quarter sessions of the peace [circuit courts] of the respective districts [counties] shall be removed by habeas corpus or certiorari to the general [superior] court, before trial and final judgment therein, except such cases as are herein after excepted. *ib. p.* 88, *ib.*

In what cases, suit may be removed to superior ct.

Sec. 27. In civil causes where the sum in dispute shall exceed the sum of one hundred dollars, and in cases of ejectment for the recovery of lands and tenements where it shall be made to appear to the satisfaction of one of the judges of the general [superior] court, that a fair trial cannot be had in the district [county] where such case is pending, or that the point on which the cause will probably be determined is new or difficult, or that one or more of the judges of the inferior court or the sheriff of the district [county] are interested or prejudiced, it shall and may be lawful for the judge of the general [superior] court to issue a writ of certiorari or habeas corpus under his hand and seal, or to allow such writ to remove such cause into the general [superior] court: *Provided always*, That no civil cause shall be removed by certiorari or habeas corpus except during the term to which the original writ was returnable or to the next succeeding term, and if a writ of certiorari or habeas corpus shall be presented to any subsequent term the inferior court shall take no notice thereof but proceed to trial and final judgment. *ib. p.* 90—91, *ib.*

By whom writ allowed.

Within what time to be presented.

Sec. 28. In all suits cognizable in the courts of common pleas [circuit courts] when either of the parties shall fear that he will not receive a fair trial, in the court wherein it is depending on account of one of the judges of the court where the suit is depending is interested or prejudiced, or that the sheriff (or if he be a party) the coroner is interested or prejudiced, or that the adverse party has an undue influence over the minds of the inhabitants of the district [county] where the suit is depending, or that the petitioner is so odious that he cannot expect a fair trial, the said party may petition a judge of the general [superior] court for a change of the *venue* of such cause, distinctly setting forth the cause of such fear, and supported by his affidavit or affirmation, previous notice of such application and of the time and place of hearing the same being given to the adverse party or his attorney, on which petition the judge may under his hand award a change of *venue*, and order the clerk of the court where the suit is depending to send forward the papers in the suit by some fit person to the court of common pleas [circuit court] of the next convenient district [county] as the judge may direct, and the clerk of such court shall receive them, and give a receipt therefor, and docket the suit in order and the court shall have full authority and jurisdiction to award subpœnas for witnesses and to enforce their attendance; to grant rules and commissions for the taking of depositions; to hear and determine the said controversy; to award execution, and to do every thing relating thereto which the court from which

Change of *venue* in what cases and how obtained.

Proceedings on venue being charged.

the suit was removed might have done. The expences attending the removal of such suit shall be paid by the petitioner, and the person employed to carry the papers, shall have the same fees for travelling as a sheriff, which shall be paid to the clerk before the papers leave the office. The petition, affidavit, and judges order, together with the expences attending the removal shall be deposited with the clerk at least thirty days before the court to which the suit shall be set for trial. No change of *venue* shall take place so as to have the cause sent to either of the districts [counties,] where the parties or either of them reside, nor shall there be more than one removal of the same cause. *ib. p.* 109–110, *ib.*

Expences how paid.

Papers when to be filed.

Venue not to be changed to county where either party resides.

Sec. 29. When any person who now has or who may hereafter have a suit pending in the superior court of this territory, shall by himself or agent make oath that he believes he cannot have a fair trial by a jury selected from the county wherein the said court may be sitting, the court shall order a special jury to be summoned from an adjoining county for the trial of such cause or causes. *L. M. T. July sess.* 1813, *p.* 62, *pass'd 20th Aug. in force* 1st *Sept.* 1813.

Special juries in certain cases.

Sec. 30. Before the commencement of any term of the general [superior] court or court of common pleas [circuit court] the clerk of such court shall enter in a particular docket, all such causes and those only in which an issue is to be tried, or enquiry of damages is to be made, or a special verdict, case agreed or demurrer or other matter of law is to be argued, in the same order as they stand in the course of the proceeding, setting as nearly as may be an equal number of causes to each day. And the said clerks shall make *subpœnas* for the attendance of witnesses returnable on the day for which such cause is put down. It shall be the duty of the said clerks respectively to put up in their several offices at least sixty days before the commencement of any term a list of causes to be tried or decided as aforesaid at the next term, marking thereon the day on which each cause is to be tried, and keep such list affixed in some conspicuous place in their offices, till the end of the term, for the inspection of the parties, and their attornies, and every clerk neglecting so to do shall upon conviction be fined at the discretion of the court in any sum not exceeding fifty dollars. *L. L. T.* v. 1, *p.* 107–108, *pass'd* 3d *July, in force* 1st *Sept.* 1807.

Clk. to docket causes at issue, &c.

And issue subpœnas for witnesses.

List of causes at issue to be put up in clks. office.

Penalty for neglect.

Sec. 31. If at the first and second day of any term

Clk. to adjourn court in certain cases.

Lapse of term not to produce a discontinuance.

or session of the general [superior] court or court of common pleas or quarter sessions [circuit court] a sufficient number of Judges do not attend, it shall be the duty of the clerk of such court to adjourn the court to the next regular term or session; and no suit, process, indictment or pleading, civil or criminal, shall thereby abate or discontinue, but the same shall be continued of course, to the next term or session of such court. And if after the session of any court has commenced the judges thereof should be prevented by sickness or other accident to meet on any day in term, no discontinuance of such term shall thereby be produced, but such court may meet and proceed to business on the next following day. *ib. p.* 99, *ib.*

Depositions may be taken in certain cases.

Upon a rule.

Notice to be served, on whom.

When

Dedimus with interrogatories

Sec. 32. When the testimony of any person shall be necessary in any civil cause depending in the respective courts of record in this territory who live at a greater distance from the place of trial than sixty miles or is about to go out of the district [county] or territory and to a greater distance from the place of trial than aforesaid before the time of trial, or is ancient or infirm, or where the claim or defence of any party, or a material part thereof shall depend upon a single witness, the deposition of such person may be taken upon a rule of such court, to be entered either on motion during the sitting of the court, or in vacation with the clerk, and in the latter case to be taken *de bene esse*, before any judge or justice of the peace of this territory, or before any judge or justice of the peace of any of the United States or territories: *Provided*, That a copy of such rule together with a notice of the time and place of taking such depositions be first served on the adverse party, if such party resides in the territory, or his attorney of record if the party does not reside in this territory, or in case neither the party nor his attorney resides in this territory the same notification shall be put up in the clerks office of the proper district [county,] such notification to be served as aforesaid not less than three days before the taking of such deposition, and allowing moreover one day Sundays inclusive, for every twenty miles travel.* The said court shall have power to grant commissions to take depositions, upon interrogatories to such commission annexed, whenever it may be necessary to prevent a failure or delay of

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* *See Depositions.*

Depositions to perpetuate testimony.

justice. And the general [superior] court shall have power upon application to grant commissions to take depositions in *perpetuam rei memoriam*, in any matter cognizable in any court of this territory according to the usage in chancery.[*] *ib. p.* 91, *ib.*

Party to a suit dying before final judgment, ex'r or adm'r. to prosecute or defend.

Scire facias to be served on ex'r. &c.

Continuance at first term.

Two or more plffs. or defts. one or more die action to proceed.

Party dying after verdict.

Sec. 33. When any suit shall be depending in any court in this territory and either of the parties shall die before final judgment, the executors or administrators of such deceased person who was plaintiff or defendant if the cause of action doth by law survive shall have full power to prosecute or defend any such suit or action until final judgment.[†] And the defendant or defendants are hereby obliged to answer thereto accordingly, and the court before whom such case is depending is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require; and if such executor or administrator being duly served with a *scire facias* from the office of the clerk of the court where the suit is pending twenty days before hand, shall neglect or refuse to become a party to the suit the court may render judgment against the estate of the deceased, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit; and the executor or administrator who shall become a party as aforesaid, shall upon motion to the court be entitled to a continuance until the next term of the said court. And if there be two or more plaintiffs or defendants and one or more of them shall die, if the cause of action shall survive to the surviving plaintiff or plaintiffs or against the surviving defendant or defendants, the writ or action shall not be thereby abated, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.[‡] And in all civil cases if either party dies after verdict given but before judgment is rendered, judgment shall be rendered as though both parties were living. *ib. p.* 94–95, *ib.*

Suits may be continued the first term.

Sec. 34. It shall be lawful for either party to continue his suit at the first term to which the writ is

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[*] *See perpetuating Testimony.*

[†] *Where one or more of several defendants dies. See Joint and several Actions*

[‡] *Against surviving defendant and executors or adm'r. of dec'd. jointly, See Joint and several Actions.*

Cause shown the second.

made returnable; and the second term, no continuance shall be granted to either party unless for good cause shewn. *ib. pt.* 2. *p.* 16 *pass'd* 30*th Oct.* 1810.

Motions for continuance to be on affidavit.

Sec. 35. Every motion for the continuance of a cause* shall be accompanied by an affidavit of the party or his express agent that a material witness is absent, and stating what exertions have been made to procure his attendance, and that the same facts cannot be established by another witness, and that there is reasonable ground to believe that the witness may be procured by the succeeding term, in such case the party may at the discretion of the court obtain a continuance—all continuances shall be at the costs of the party obtaining the same, unless from the circumstances of the case the court should be of opinion that the costs should await the determination of the suit. *ib. pt.* 1 *p.* 111–112 *pass'd* 3*d July, in force* 1*st Sept.* 1807.

At whose costs.

Parties may have a trial by jury.

Sec. 36. If any party to a suit now depending or hereafter to be commenced in any court of record in this territory shall at any time before the trial of such cause by himself or counsel, require a trial by jury, the court before whom the suit is depending shall cause a jury to be empannelled for the trial thereof. *ib. p.* 51 *pass'd* 7*th May* 1807.

Cause may be decided by court or referred, if neither party require a jury.

Sec. 37. In all cases where neither party shall require a jury, the law and the facts may be determined by the court; or the court if they shall think proper may refer such cause to three or more indifferent and competent persons, whose report, if approved of by the court, shall have the same effect as a verdict given by twelve men.† *ib. p.* 51 *ib.*

Certain cases to be tried by jury.

Sec. 38. In all criminal cases the trial shall be by a jury of twelve good and lawful men of the vicinage and in all civil cases where the matter in dispute amounts to the sum of one hundred dollars the trial shall be by jury, if either of the parties shall require the same at any time before the trial. And in all cases criminal and civil each party shall have compulsory process to procure the attendance of witnesses. *ib. p.* 124, *pass'd* 3*d July, in force* 1*st Sept.* 1807.

Process for witnesses.

No witness to be a juror.

Sec. 39. No witness shall be permitted to be sworn as a juror, in any cause either civil or criminal in any court in this territory, and it shall be good cause of challenge to any juror that he is to be a witness in the cause to be tried, which cause of challenge, if objected to, shall be determined either on the witnesses being sworn on the voir dire or otherwise as by law directed in other cases of challenge to jurors, or by being returned as summoned as a witness by either party in the case then to be tried, and it shall moreover be a good cause of challenge to a juror, that he has either formed or delivered an opinion, and further that no person empannelled and sworn as a juror shall be made use of as a witness. *L. M. T. Dec. sess.* 1815 *p.* 55—56, *pass'd Jan.* 21*st*, 1816.

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* *After the first term—see ante sec.* 34.

† *See also Title Defalcation sec.* 3*—for the adjustment of accounts by reference, and Chancery Proceedings sec.* 11 *for the appointment of Auditors.*

Causes of challenge.

No juror sworn as such to be a witness

Sec. 40. No person being convicted of perjury or subornation of perjury although he be pardoned or punished for the same shall be a witness in any court of record—The rules of the common law respecting evidence as adopted by the courts of the United States having common law jurisdiction shall govern the decisions of the courts of this territory in like cases. *L. L. T. pt.* 1 *page* 126 *pass'd* 3*d July, in force* 1*st Sept.* 1807.

Convicts of perjury not to be a witness.

Rule of evidence.

Sec. 41. No negro or mulatto* shall be a witness, except in pleas of the United States against negro or mulatto or in civil pleas where negroes alone shall be parties. *ib. p.* 13 *pass'd* 1*st Oct.* 1804.

No negro or mulatto to be a witness.

Sec. 42. Any person summoned as a witness† at a court, or before commissioners, referees or other persons appointed under the authority of a court to take his deposition or testimony, and failing to attend not having a reasonable excuse, may be compelled by attachment to appear, and shall be fined by the court issuing the *subpœna,* after giving the party ten days previous notice, in any sum not exceeding ten dollars.‡ He shall likewise be liable to the action of the party for damages sustained by his non-attendance. But if his inability be shewn to the court at the time he ought to have attended, or at the next succeeding court, no fine or action shall be incurred. Any person so summoned and attending in any of the before mentioned cases, who shall refuse to give evidence on oath or affirmation, as the case may be, shall be committed to prison by the court or other person authorised to take his de-

Witnesses summoned & not attending may be attached.

And fined and liable for damages, unless, &c.

Witness refusing to give evidence.

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* *Who shall be deemed mulattoes—see Title Mulattoes.*

† *By whom summoned—see ante sec.* 30 *and Justice of the Peace sec.* 8.

‡ *See also post sec.* 43.

Witnesses priviledged from arrest.

Summons by whom to be issued.

May be served in any county.

position, or testimony, there to remain without bail or main-prize until he shall give such evidence. And witnesses shall be privileged from arrests in all cases except treason, felony or breach of the peace, during their attendance on any court or other place where their attendance is required by *subpœna* and in coming and returning from thence, allowing one day for every twenty miles from their abode. And every person who shall cause a witness to be arrested knowing him to be attending as such, upon a *subpœna*, his suit shall be abated and he moreover fined at the discretion of the court from which the *subpœna* issued, after giving the party ten days previous notice, in any sum not exceeding twenty dollars. In all cases where witnesses are required to attend as aforesaid a summons shall be issued by the clerk of the court at the request of either party interested, or of the commissioners or referrees, acting under the authority of such court, expressing the day and place where they are to appear, the names of the parties to the suit, and in whose behalf summoned; and any *subpœna* or process to require or compel the attendance of a witness may be served and executed, in the district [county] wherein the witness may be found.* *ib. p.* 92—93—94 *pass'd 3d July, in force 1st Sept.* 1807.

Power of court over witnesses.

Sec. 43. The superior and circuit courts in this territory shall have power to fine any person duly summoned as a witness, and who shall not attend in pursuance of such summons, any sum not exceeding ten dollars for the use of the territory and such delinquent shall also, if the legal fees for his travel and one day's attendance have been paid or tendered to him when he was summoned to attend, he shall also forfeit and pay to the party who may have caused him to be summoned, and who has paid or tendered his legal fees as aforesaid, not having been prevented therefrom by sickness, or other unavoidable accidents, not exceeding the sum of fifty dollars to be recovered by an action of debt in any court of competent jurisdiction. *L. M. T. Dec. sess.* 1816 *p.* 139 *pass'd 1st Feb. in force 1st July* 1817.

Court may require parties to produce books, &c.

Sec. 44. The general [superior] court, and several courts of common pleas [circuit courts] shall have power in any action depending before them, on motion and upon good and sufficient cause being shewn by affidavit or affirmation, and due notice thereof being given to require the parties or either of them to produce books or writings in their possession or power, which certain evidence pertinent to the issue, and if either party shall fail to comply with such order and to produce such books or writings or to satisfy said court why the same is not in the party's power so to do, it shall be lawful for the said courts, if the party so refusing shall be plaintiff, to give judgment for the defendant as in cases of *non suit* and if defendant to give judgment against him or her by *default* so far as relates to such part of the plaintiffs demand or the defendant's defence to which the books or papers of the party is alledged to apply. *L. L. T. pt.* 1 *p.* 95, *pass'd 3d July, in force* 1st *Sept,* 1807.

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* *Writs of Habeas Corpus to testify may Issue—See Habeas Corpus, section* 17.

Proceedings on refusal.

Sec. 45. The several courts of record in this territory shall have power to appoint some competent person as interpreter, to interpret the testimony of witnesses or other evidence who shall hold their offices during the pleasure of the court. The said interpreters shall be sworn in open court to interpret well and truly to the best of their abilities the testimony of witnesses or other evidences which they may be called to interpret. Every interpreter shall be entitled to receive for every witness or instrument of writing that he may interpret in open court the sum of twenty five cents to be paid by the party calling such witness or producing such other evidence, at the time the service of the interpreter is required, and to be allowed like other costs to the party obtaining a judgment in such cause. *ib. p.* 123, *ib.*

Court may appoint interpreters.

To be sworn.

Fees.

Sec. 46. When one impleaded before any court and in any cause where an appeal or writ of error lies to the general [superior] court, doth alledge an exception praying the judges will allow it, if they will not allow it, and he that alledgeth the exception doth write the same exception, and require that the judges will sign the same, in testimony whereof the judges or the greatest part of them present shall do so—and if they shall refuse to sign a *bill of exception* tendered to them and the same is certified and signed by the bye-standers, such bye-standers being at least three reputable inhabitants of this territory, the court shall permit the said *bill* to be filed, and become part of the record, if they refuse the general [superior] court may, when such cause is brought before them, by writ of error or

Bill of exceptions to be allowed and signed by judges.

May be signed by bye standers in certain cases.

appeal upon proper affidavit of such refusal in their discretion admit such *bill of exceptions* as a part of the record. When the court shall certify as cause of their refusal to sign such *bill*, that its statement is not true, and bye-standers shall sign the bill, certifying its truth, affidavits may be taken by either party as to its truth, during the term, or if the cause be tried on the last day thereof, then within five days thereafter, and in either case shall be deposited with the clerk, and shall be certified with the record. But neither party shall file more than five such affidavits. *ib. p.* 110—111, *ib.*

And made part of record.

Non suit,

Judgt. by confession, effect of.

Jurors knowing any thing, &c.

Faulty counts disregarded & verdict, good.

Sec. 47. No plaintiff shall be permitted to suffer a *non-suit* after the jury have retired from the bar to make up their virdict. A judgment on confession shall be equal to a release of errors. Jurors knowing any thing relative to the point in issue shall disclose the same in open court.* Where there are several counts in a declaration one or more of which are faulty and entire damages given the verdict shall be good, but the defendant may apply to the court to instruct the jury to disregard such count or counts as are faulty. *ib. p.* 124—5 *ib.*

Full costs not allowed in certain cases.

Sec. 48. If in any action of trespass on the case for slander or action of trespass *vi et armis* that may hereafter be instituted in any court of record within this territory, the plaintiff shall recover less than ten dollars, such plaintiff shall be allowed to recover two thirds of the costs given by law in such suit and no more. *ib. p.* 113 *ib.*

Party recovering less than $200 in S. C.

Certain suits not to be brought in S. C.

Sec. 49. *A party instituting hereafter by original writ a suit in the general [superior] court who shall recover less than two hundred dollars in debt or damages shall not be entitled to any costs from the adverse party, And no action of slander or assault and battery shall be instituted in the general [superior] court.*† *L. L. T. pt.* 1 *page* 122 *pass'd 3d July* 1807, *in force* 1*st Sept.*

Costs of witnesses.

Sec. 50. No more than three witnesses shall be taxed in any bill of costs for the establishment of any one fact in a cause. *ib. p.* 122 *ib.*

Motions for new trial and arrest of judgment.

Sec. 51. All motions for a new trial and in arrest of judgment shall be made within four days after the verdict rendered upon reasons in writing filed. Not more than one new trial shall be granted to either party. And the court may either direct the party obtaining a new trial to pay the costs or direct that they shall await the determination of the suit. *ib. p.* 122 *ib.*

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* *Quere, see ante sec.* 39.

† *The Superior Court has original and appellate Jurisdiction in all cases of the value of one hundred dollars. Organic Law, Chap.* 1 *sec.* 10.

Sec. 52. It shall be lawful for the general [superior] court, to grant to either party more than one new trial if it shall appear to said court that the jury have erred upon a question of Law. *ib. pt.* 2 *p.* 17 *pass'd* 3*d Oct.* 1810.

More than one new trial may be granted by S C.

Sec. 53. No judgment after a verdict of twelve men or award of arbitrators, shall be stayed or reversed, for any defect or fault in the writ *original or judicial* or or for variation in the writ from the declaration other proceedings, or any mispleading insufficient pleading, discontinuance, misjoining of the issue, or want of a warrant of attorney, or for other informality in entering up the judgment by the clerk. And when a judgment is arrested the plaintiff shall not be obliged to bring a new suit, provided the first writ be sufficient; but the court may order new pleadings to commence where the error causing the arrest began, and when a judgment is arrested the party committing the error shall pay the costs occasioned thereby. *ib. p.* 108—109, *pass'd* 3*d July, in force* 1*st Sept.* 1807.

Judg't not to be arrested for informality.

Suit not to abate on arrest of judgt. if writ is sufficient.

Appeal.

Sec. 54. If any person shall feel himself or herself aggrieved by any final decision or judgment given in any of the courts of common pleas [circuit courts] in any cause wherein the *matter in dispute exceeds, exclusive of costs, the sum or value of one hundred dollars, it shall* and may be lawful, for such person at the term in which judgment is given to enter his or her appeal to the general [superior] court; *Provided, That no appeal shall be granted to any defendant in actions of debt or in actions upon the case for note, bill, book account or assumpsit, unless the defendant or his agent shall make affidavit or affirmation stating that he does not appeal for the purpose of delay or vexation, but that he believes himself aggrieved by the judgment of the inferior court.** It shall be the duty of the courts of common pleas, [circuit courts] to require of the party appealing, if plaintiff a recognizance with one or more sureties in a sum sufficient to cover the costs in the inferior court and the costs of such appeal, and if defendant a recognizance with one or more securities in a sum sufficient to cover the amount for which judgment has been given together with the costs that have accrued or that may accrue by

Appelant to enter into recognizance.

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* *See post sec.* 55.

such appeal conditioned that the appellant shall pay the costs if plaintiff or the debt or damages and costs if defendant, in case the judgment of the inferior court shall be confirmed by the general [superior] court; and such recognizance being offered and given and the appeal entered on record the said court shall not proceed any further in such cause. It shall be the duty of the party appealing to demand from the clerk a true copy of all the proceedings in such cause and to enter the same with the clerk of the general [superior] court on or before the third day of the next succeeding term of the general [superior] court, and if the party shall neglect so to do, it shall and [may be] lawful for the adverse party producing a certificate from the clerk of the court below that an appeal has been entered and a recognizance given as aforesaid, to move the court that the said judgment may stand confirmed. Whereupon the said general [superior] court unless satisfactory reasons for having neglected to enter the aforesaid appeal be shewn shall confirm the judgment of the court below, and cause an endorsement thereof to be made on the aforesaid certificate, which certificate and endorsement being filed with the clerk of the inferior court, it shall be the duty of such clerk to enter a judgment on the recognizance, and to issue execution for the amount of debt damages and costs as the case may be for which judgment has been given in the inferior court, together with the fees of the officers in the general [superior] court. And when an appeal as aforesaid shall have been duly entered in the general [superior] court, it shall be the duty of the judges, to examine the record, and to award a new trial, reverse or affirm the judgment of the court below or give such judgment as the court below ought to have given, as to them may appear according to justice. And the general [superior] court may order the record aforesaid with their decision and determination thereon written and duly certified to be remitted to the said inferior court, on payment of the fees incurred in said general [superior] court, and the same decision and determination shall be duly carried into execution by such inferior court, or the general [superior] court may award execution to carry into effect its decision and determination. *ib. p.* 88—89—90 *ib.*

Appeal to stay proceedings.

Appellant to enter his appeal with clk. of S. C.

Neglect to enter appeal.

Proceedings where appeal is entered

Sec. 55. In any suit depending in the circuit court, or hereafter to be brought in the circuit court, in which

Appeals from C. C.

the value of the thing sued for amounts to the sum of one hundred dollars exclusive of costs, in which a judgment shall be rendered for that amount in debt and damages or damages alone, and in actions of replevin and ejectment, the party aggrieved by such judgment of the court may appeal to the next superior court for the circuit in which judgment is rendered, and it shall be the duty of the party appealing to enter into bond with one or more sufficient securities, to be approved by said circuit court, in double the amount of such judgment or the value of the property recovered in such action or suit to the opposite party, conditioned to prosecute such appeal with effect or in default thereof to pay all damages and costs occasioned thereby, which damages shall be ten per centum on the amount of such judgment exclusive of the legal interest; and the said bond being filed in the said circuit court, no further proceedings shall be had therein, in the said circuit court, and such appeal, being entered in the superior court, shall be there heard and tried upon the merits *de novo* on the pleadings as filed therein in the circuit court, as though no trial had taken place in the circuit court. And if on the final trial in the said superior court the judgment shall be in favor of the same party and for the [same] amount and thing, as the amount of the judgment appealed from the appellant shall pay to the appellee, in addition to such judgment and in addition to the legal interest, ten per centum per annum, for the time of entering such judgment in the circuit court below, to be computed by the clerk of the superior court, and execution issued therefor as in other cases. *L. M. T. Dec. sess.* 1816, *p.* 137, *pass'd* 1 *Feb. in force* 1st *July*, 1817.

Bond.

Trial in the superior court

Judgment.

Damages.

Sec. 56. Writs of error, from the final decision or judgment of any court of common pleas [circuit court,] shall issue on demand as a matter of right, but no writ of error issued out of the general [superior] court shall be a *supersedeas* unless by a special order of the general [superior] court, or some judge thereof in vacation, after inspecting a copy of the record and the plaintiff in error by himself or a responsible person in his behalf entering, in the clerks office, into a recognizance in double the sum recovered in the court below, with one or more sufficient securities, to the defendant in error, to be approved of by the clerk, for the due prosecution of the suit in error and in case of the affirmance of the

Writ of error to issue on demand.

Not to be a supersedeas unless by the order of a judge of S. C. and bond given.

Order of S. C. or judge being produced to be a *supersedeas.*

judgment to pay the defendant in error the condemnation and costs. When such order is made and surety given as aforesaid, the said clerk shall endorse on the said writ of error that it shall be a *supersedeas* and obeyed as such accordingly. If any execution shall have been issued from the inferior court before the producing of the writ of error, the plaintiff in error or any other person for him exhibiting the writ of error, with the endorsement as aforesaid, to the officer in whose hands the execution is, such officer shall not proceed any further with said execution, but return the same to the court stating thereon the reason of his not having proceeded. *L. L. T. pt. 1, p. 125, pass'd 3d July, in force* 1st *Sept.* 1807.

Appeals or writs of error.

Sec. 57. On an appeal or writ of error brought before the general [superior] court, no exception shall be taken to the proceedings at law in the court below, but such as have been expressly decided on by the inferior court.* *ib. p.* 122, *ib.*

S. C. divided, judgt. affirmed.

Sec. 58. Whenever the general [superior] court shall be divided in opinion on the hearing of any writ of error or appeal the judgment or decree appealed from shall be affirmed. *ib. p.* 126, *ib.*

Judgment to be a lien on lands.

Sec. 59. Judgments obtained in the general [superior] court shall be a *lien* on the lands and tenements of the person, or persons against whom the same has been entered, situate in any part of this territory, and judgments obtained in a court of common pleas [circuit court] of any district [county] shall be a *lien* on the lands and tenements of the person against whom the same has been entered situate in such district [county:] *Provided*, That no judgment now on record in any court within this territory shall continue a *lien* on the lands and tenements of any person against whom the same has been entered during a longer term than five years from and after the passing of this act, unless the person who has obtained such judgment or his legal representatives or other person interested within the said term of five years sue out of the court where the same has been entered a writ of *scire facias* to revive the same. And no judgment hereafter entered in any court of record within this territory shall continue a *lien* on the lands and tenements against whom the same has been entered during a longer term than five years from the

For the space of 5 years.

May be revived by scire facias.

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* *The trial may be had de novo on appeal. See ante sec.* 55.

first return day of the term, of which such judgment may be entered unless the same shall have been *revived* by *scire facias*, within the said term of five years as aforesaid, and all such writs of *scire facias* shall be served on the *terre tenant* or person occupying such lands and tenements bound by the judgment, and also on the defendants, or his assigns, or on the heirs, executors or administrators of such defendant or his assigns. And where the lands and tenements are not in immediate occupation of any person and the defendant or his assigns, or their heirs, executors or administrators cannot be found, the clerk of the court in which such proceedings shall have been instituted, shall cause a public notice to be inserted three times in some newspaper printed in this territory, or if none is printed in this territory, then in some newspaper printed in the nearest territory or state, calling on all persons interested to shew cause why such judgment should not be *revived*, and on due proof of service of the *scire facias* or of such notice having been given as aforesaid, the court in which the first judgment has been entered, shall unless sufficient cause to prevent the same is shewn at or before the second term subsequent to the issuing of such writ, direct and order the revival of such judgment during another period of five years, against the lands and tenements of such defendant. And proceedings may in like manner be had again to revive any such judgment at the end of the said period of five years, and so from period to period, as often as the same may be. Such writs of *scire facias* may be issued by the several courts of common pleas [circuit courts] into any district [county] where the defendant lives. *ib. p.* 113 *to* 115, *ib.*

On whom scire facias to be served.

When defendants,&c cannot be found, notice to be published.

Judgment renewed for five years.

Scire Facias repeated as often as necessary

To run into any county.

Sec. 60. It shall be the duty of the clerk of every court of record to issue a writ of execution in conformity with the judgment rendered. *ib. pt.* 2, *p.* 17, *pass'd* 30*th Oct.* 1810.

Execution to issue in conformity with judgment.

Sec. 61. Writs of execution shall be issued by the clerks of the several courts of record in this territory in the following form, to wit:

Form of writ of execution.

"The United States of America to the sheriff of the district [county] of   , greeting: Whereas A. B. at our court of   , before our judges, hath recovered against C. D. the sum of   for debt, (or damages as the case may be) and also for the sum of   which to the said A. B. were adjudged for his damages, Clerks to keep a list of executions, &c.

as well by reason of detaining the said debt, as for his costs in that suit expended, as appears to us of record. These are therefore to command you, that of the goods and chattels, lands and tenements, of the said C. D. you cause to be made the aforesaid debt (or damages) and costs, and that you have the same before the judges of our said court on the day of next to render to the said A. B. the debt and damages (or damages alone) aforesaid. And for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you that you take C. D. if he be found in your bailiwick and him safely keep so that you have his body before the same judges on the said day of to satisfy the said A. B. of the aforesaid debt [or damages] and costs and that you certify to our said judges how you execute this writ, and have you then there this writ. Witness E. F. presiding judge of our said court at the day of 18 G. H. Clerk,"* The clerk of the general [superior] court and courts of common pleas [circuit courts] shall keep a book for the purpose of entering a list of all executions issued, the officer to whom directed, and the amount of debt (or damages as the case may be) and costs for which the same has issued and the return made thereon. *ib. pt. 1, p. 115-116 pass'd 3d July, in force 1st Sept. 1807.*

From what time goods &c bound by execution.

Sheriff to endorse time of receiving execution, & give notice of sale.

Sec. 62. Every writ of execution shall bind the property of the goods and slaves of the person against whom such writ of execution is sued, but from the time that such writ shall be delivered to the sheriff or his deputy to be executed. And such officer shall, upon the receipt of every execution, endorse thereon the day of the month and year whereon he received the same, and before the sale of such property the sheriff shall give ten days notice of the time and place of the sale thereof, and the articles to be sold by at least four handbills put up in the most public places of the district [county.] *ib. p. 117, ib.*

Lands, &c. how liable on execution.

Sec. 63. All lands, tenements and hereditaments whatsoever within this territory, where no sufficient personal estate can be found, shall be liable to be seized and sold upon judgment and execution obtained. *ib. p. 115, ib.*

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* *The clerk shall endorse on every execution the fees due to each officer distinctly. See Fees sec.* 20.

Sec. 64. All lands tenements, hereditaments, shall be liable to be seized and sold upon judgment and execution obtained against the defendant or defendants in full life or against his or her heirs executors or administrators after the decease of the testate or intestate, provided no such lands, tenements or hereditaments shall be seized and sold until after the expiration of eighteen months, from the death of such ancestor, or the date of the letters testamentary or letters of administration, and execution may issue against such lands, tenements or hereditaments after the death of such ancestor, testate or intestate, and after the time aforesaid, in the same manner as if such person were living. *L. M. T. Dec. sess.* 1816, *p.* 49, *pass'd 25th Jan. in force 1st April,* 1817.

Real estate of deceased may be seized to satisfy judg'ts.

After 18 mo's.

Sec. 65. The several courts of common pleas [circuit courts] shall have power to issue executions into any district [county] of this territory where it hath been certified to such court that the defendant has no estate in the district [county,] and upon such execution the sheriff shall proceed in the same manner as is before directed, provided that the sheriff shall acknowledge the deed in the court of the district [county] where the lands lie. *L. L. T. pt.* 1 *p.* 118, *pass'd 3d July, in force 1st Sept.* 1807.

Circuit courts may issue executions to other counties in certain cases.

Sec. 66. Where lands and tenements shall be taken in execution by the sheriff it shall be his duty to expose the same to sale at the court-house door on some day while the court of common pleas or quarter sessions in the district [county] are in session, having previously given twenty days notice of the time and place of sale, and what lands and tenements are to be sold, and where they lie, by at least six hand-bills affixed in the most public places in different parts of the district [county,] and upon such sale the sheriff shall make return of the writ together with a copy of the advertisement put up as aforesaid, and give the buyer a deed duly executed and acknowledged in court, for what is sold, which deed shall recite the execution purchase and consideration and shall be effectual for passing to the purchaser all the estate and interest which the debtor had or might lawfully part with in the lands at the time the judgment was obtained. *ib. p.* 117—118 *ib.*

Where and when lands taken in execution shall be sold.

Notice of sale

Duty of sheriff in returning execution and ex'cut'g deeds

Sec. 67. In all cases where lands shall be taken on execution the same shall be sold on the second day of

Sales of land, when.

the court and the execution shall be returned on the last day of the term. And where an execution shall be issued from the court of common pleas [circuit court] of any district [county] into any other district [county] of this territory, the lands taken by virtue thereof shall be sold as aforesaid by virtue of the first execution so issued out of the district [county,] and the sheriff shall return the execution to the clerk issuing the same in thirty days after sale. *Ib. p.* 338—339 *pass'd 7th Nov.* 1808.

Sales of land, when & where

Sec. 68. And all sales of land by execution shall hereafter be made during the sitting of the circuit court of the county where such sales may be. *L. M. T. Dec. sess.* 1814 *p.* 53, *pass'd 4th Jan. in force 15th Feb.* 1815.

Property seized and title disputed, how tried.

Costs.

Jurors Fees.

Sec. 69. Whenever an execution, order or decree of a court is placed in the hands of the sheriff, for the sale of property, and any other person sets up a demand against the property seized, the sheriff shall be authorized to summon a jury to determine the right of property and the verdict of such jury shall be an indemnity to the said sheriff as far as respects the right of property. And the party against whom the verdict is rendered shall pay the costs of their ascertaining the right of property, and such jurors shall be entitled to the same fees as jurors are entitled to in other cases.* *L. L. T. pt.* 1, *p.* 337 *pass'd 7th Nov.* 1808.

Lands taken on execution how & when to be sold.

Notice.

When a bidder shall neglect or refuse to pay.

Lands to be again sold.

Deficiency to be recovered.

Sec. 70. When lands and tenements shall be taken in execution by the sheriff, it shall be his duty to expose the same to sale at the court house door, on *some* day during the term of the court of common pleas [circuit court] where the land lies,† having previously given twenty days notice of the time and place of sale, and what lands and tenements are to be sold and where they are situated, by at least six hand bills affixed in the most public places in different parts of the county, or by advertising the same in any newspaper printed within the county; and in case any last bidder shall neglect or refuse to pay to the sheriff the amount bid for such lands and tenements on demand, the sheriff shall at any time within two days thereafter, or instanter if he thinks proper, offer the said lands and tenements again for sale to the highest bidder, and if any loss should be occasioned thereby, the said sheriff may and shall recover the amount of such loss with costs on motion made to the court, who shall give judgment

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* *See Title Fees sec.* 10. † *Second day, ante, sec.* 67.

Surplus how disposed of.

and grant execution therefor, instanter, and if the lands and tenements, so sold by the sheriff, by reason of any last bidder neglecting or refusing to pay for the same, should sell for a greater price than that first bid by the person neglecting or refusing to pay, the overplus shall go towards discharging the amount of the execution or executions on which said lands or tenements are sold, or be paid, if there should be sufficient without it to the party whose lands were taken on any such execution or executions. And the said sheriff may, in like manner proceed against any subsequent purchaser who may neglect or refuse to pay as aforesaid. *L. M. T. July sess.* 1813. *p.* 59—60 *pass'd* 20*th Aug. in force*, 1*st Sept.* 1813.

Duty of clerks on acknowledgment of deed by sh'ff.

Sec. 71. It shall be the duty of the clerks of the several courts in this territory to endorse upon every deed acknowledged by any sheriff, a certificate of such acknowledgment, and under the seal of the court, and to enter on the minutes a description of the lands and tenements sold, the purchase money and the names of the parties to the suit. *L. L. T. pt.* 1. *p.* 118. *pass'd* 3*d July, in force* 1 *Sep.* 1807.

Deeds for lands sold by execut'n from S. C't may be acknowledged in C't. co't.

Sec. 72. The sheriffs of the respective districts [counties] may acknowledge deeds for lands and tenements sold upon execution from the general [superior] court in the court of common pleas [circuit court] for the district [county] where the lands lie. *ib. ib. ib.*

Execution to be returned to S. C't before acknowledgment.

Sec. 73 Where lands are sold by a sheriff in pursuance of an execution from the general [superior court], it shall not be lawful for the sheriff to acknowledge the deed in the court of common pleas [circut court] until after the return of the execution. *ib. pt.* 2. *p.* 17 *pass'd* 30*th Oct*, 1810.

Death or removal of sh'ff. before execution returned or deed given.

Court may order his successor to complete execution.

Sec. 74. Where a sheriff shall die or be removed from office after having taken in execution any lands, tenements or hereditaments and before or after the sale thereof upon execution, and before the purchaser hath obtained a deed, it shall and may be lawful for the plaintiff or purchaser to petition the court from which the execution issued, stating the premises, and (if after the sale) satisfying the court that the purchase money has been paid, where upon it shall be the duty of the court to order the sheriff then in office to proceed to sell the lands, tenements and hereditaments, taken in execution, or to execute and acknowledge a deed to the purchaser as the case may be, which sale or deed shall have the same force and effect as if the sheriff who made the levy or sale had remained in office and sold the premises or executed the deed. *ib. pt.* 1. *p.* 118, 119, *pass'd* 3d *July in force* 1st *Sept.* 1807.

Penalty on sheriff failing to return execution.

Sec. 75. A sheriff failing to return any writ of execution to the proper court, on or before the return day thereof, shall be liable to be fined by the court upon motion of the party injured, and three days previous notice being given, in any sum not exceeding five dollars per month for every one hundred dollars contained in the judgment and so for any greater or lesser sum, counting from the return day of the execution, to the day of rendering the judgment or the fine. *ib. p.* 119, *ib.*

Sheriff mak'g false return or failing to pay over money collected on execution or consenting to defend'ts escape.

Sec 76. If any sheriff shall return upon any execution that he hath levied the monies therein mentioned or any part thereof, or shall return that he hath taken the body of the defendant and hath the same ready to satisfy the plaintiff's judgment, and such sheriff shall have actually received the money or suffered the defendant to escape by his consent, or if it shall appear to the court by the sheriff's receipt, or by any other testimony, that any sheriff hath received money upon any execution put into his hands, and the sheriff in any such case shall refuse to pay the money to the person to whom the same is payable, or to any other person duly authorised to receive the same, then and in either of the said cases the court upon motion of the party injured, three days previous notice being given to the sheriff shall give a judgment against the sheriff for so much money as shall be returned levied on such execution, or shall appear to the court to have been received by the sheriff, or for the full amount of the execution, in case the sheriff has suffered the defendant to escape by his consent, and to award execution against him, which execution the coroner shall execute within fifteen days after delivery, and pay the money levied to the party or any person duly authorised to receive the same, and shall moreover be liable to the same fine for like sums as is imposed by the fifty first section of this act.* *ib. p.* 119—120, *ib.*

Bail may surrender principal.

Sec. 77. The persons who are become bound in a bail bond as aforesaid† may surrender the principal before the court where the suit is depending at any time before or after judgment: *Provided*, It be before the return of the first *scire facias* against the bail returned executed, or of the second returned *nihil*, but in either case the bail shall pay the cost of the *scire facias*, and judgment for the same shall be entered against him accordingly* upon such surrender the bail shall be discharged and the defendant committed to the custody of the sheriff, or jailor attending such court or the bail may discharge himself by obtaining a copy of the said bail bond out of the clerks office and surrendering the principal to the sheriff of the district [county] where the original was served, and the sheriff shall receive such defendant, and commit him to jail, and give a receipt for his body which shall be filed in the clerks office. When such surrender after judgment shall be to the sheriff he shall keep the defendant in custody, in the same manner, and subject to the same rules as are provided for debtors committed in execution, for the space of twenty days, unless the creditor his attorney or agent, shall sooner consent to his discharge. The bail shall give immediate notice of such surrender to the creditor his attorney or agent, and if within the said twenty days the debtor shall not be charged in execution he shall forthwith be discharged out of custody; but the plaintiff may nevertheless afterwards have a remedy against the property of such debtor. , *ib. p.* 104–105, *ib.*

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* *Ante sec.* 75.

† *Ante sec.* 12.

Proviso.

Remedy of bail against principal.

Sec. 78 When judgment hath been or shall hereafter be entered up in any of the courts of record in this territory, against any person or persons as appearance or special bail for another person or persons in any suit or action depending in such court and the amount of such judgment or any part thereof hath been paid or discharged by such bail, his her or their heirs, executors or administrators, it shall and may be lawful for such bail, his, her or their heirs executors or administrators to obtain judgment by motion against the person or persons, for whose appearance he, she or they were bound, his, her or their heirs, executors or administrators, for the full amount of what may have been paid by the said bail, his, her or their heirs, executors or administrators together with the interest at the rate of ten per centum per annum and costs in any court where judgment may have been entered up, a-

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* *See Habeas Corpus sec.* 17.

Notice to be given to principal

gainst such appearance or special bail: *Provided always*, That no judgment shall be obtained by motion in any of the cases aforesaid, unless the party or parties against whom the same is prayed, shall have thirty days previous notice thereof in case he, she or they reside in the territory, and if they do not reside in the territory then the insertion of such notice for six weeks successively in any Gazette published in the territory shall be sufficient. *L. M. T. Dec. sess.* 1815, *p.* 18, *pass'd Jan'y.* 10*th*, 1816.

Judges opinions to be recorded, in certain cases.

Sec. 79. It shall be the duty of the judges of the superior court in all decisions or special verdicts, cases reserved, writs of error, demurrer, either in the course of pleadings or to evidence and motions in arrest of judgment severally to draw up their opinions in writing and deliver the same to the clerk, whose duty it shall be to enter such opinions at large in a book to be by him kept for that purpose. *ib.* 1814. *p.* 56. *pass'd* 4*th Jan.* 1815.

The judges shall note all defects in the laws and lay the same before the legislature.

Sec. 80 For the purposes of improving the laws of this territory, it is hereby declared to be the duty of each of the judges of the superior and circuit courts, to note all obvious hardships, defects and omissions they may discover in the laws of this territory, in the course of their decisions, and lay the same before the legislature at every stated meeting of the general assembly of this territory on or before the expiration of the first week of their said meeting. *ib.* 1815. *p.* 59. *pass'd* 21*st Jan'y.* 1816.

JURORS.

Court may direct sheriff to summon jurors.

Sec. 1. The several courts within this territory before whom juries are required, are hereby authorised to direct the respective sheriffs to summon a sufficient number of persons to perform the duties of jurors. *L. L. T. pt.* 2, *p.* 3, *pass'd* 25*th Oct.* 1810, *in force* 1*st Jan.* 1811.

Who may be summoned.

Who exempt.

Sec. 2. Every male resident within the territory, of lawful age, shall be subject to the summons of the sheriff for the purposes aforesaid, excepting such persons as are herein excepted.* All persons exercising the functions of Clergymen, Practitioner of Physic, Attornies at law, Sheriffs, Clerks of courts, Ferry keepers, Constables and Judges of the courts of record. And the courts are hereby required to divide the task of serving on juries as nearly equally as practicable among the citizens summoned before them as jurors. And in order the more effectually to obtain the impartial administration of justice, the several courts may direct the several sheriffs to avoid persons of ill fame, or those who may labour under the undue influence of either party. *ib. p.* 374, *ib.*

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* *See Organic Law, Chap.* 1, *sec.* 11.

Service to be divided.

Certain persons not to be summoned.

Sec. 2. Every person summoned by the sheriff to serve as a juror, who shall fail to attend agreeably to such summons, shall be fined, not exceeding the sum of ten dollars, unless a satisfactory excuse is offered. *ib. ib. ib.*

Fine for non attendance.

JUSTICES OF THE PEACE.

Sec. 1. The governor shall appoint and commission in every township one or more persons as justices of the peace, whose jurisdiction in criminal cases shall extend over the whole district [county] and in civil cases* over the townships for which they are respectively commissioned. *L. L. T. pt.* 1, *p.* 167, *pass'd 4th July* 1807.

By whom appointed.

Extent of jurisdiction.

Sec. 2. No justice of the peace shall take cognizance of any action of ejectment brought to obtain possession of lands and tenements, actions of replevin, slander, actions on real contracts for the sale or conveyance of lands and tenements, civil actions for damages, or actions of assault and battery, wounding, maiming, actions of false imprisonment or actions upon promise of marriage. *L. M. T. Dec. sess* 1813, *p.* 54, *pass'd Jan.* 11, *in force* 1 *May* 1814.

Jurisdiction in civil cases restrained.

Sec. 3. Every justice of the peace within this territory shall be and he is hereby empowered to grant subpœnas for witnesses in all cases cognizable before the general or superior court and the several courts of common pleas [circuit courts] within this territory, in all cases cognizable before a justice of the peace, in all matters submitted to referrees or arbitrators to appear at a certain time and place where the same may be lawfully taken, to give his deposition or evidence and such subpœnas may be directed to any constable in the township where the witness resides, if within the same county with the justice issuing the subpœna which said

May issue subpœnas for witnesses to courts, or before himself &c.

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* *For jurisdiction in civil cases, See Small debts, Trespasses & Forcible Entry & Detainer.*

constable is hereby empowered to serve and return the same. *ib. p.* 47, *ib.*

LARCENY.

See Crimes and Misdemeanours, sec. 9.

LAWRENCE COUNTY.

See Counties, sec. 8.

LIBEL.

On prosecutions for, truth may be given in evidence.

Sec. 1. In all cases of indictments or prosecutions for libels, the defendant shall be at liberty to give the truth in evidence under the general issue, first filing a notice of the facts on which he intends to rely, or plead it specially. *L. M. T. Dec. sess.* 1815, *p.* 41, *pass'd* 20*th Jan. in force* 1*st June,* 1816.

LIMITATION OF ACTIONS.

Rights of actions limited.

Sec. 1. In all actions upon the case other than for slander, actions for accounts other than such accounts as concern the trade of merchandize between merchant and merchant, their factors and servants, actions for debt grounded upon any lending or contract without specialty, or of debt for arrearages of rent, actions of trespass *quare clausum fregit*, shall be brought within five years after the first day of September next, or within five years after the cause of action shall accrue: All actions upon accounts for goods wares and merchandizes sold and delivered or for any article in any store account; all actions of trespass *vi et armis*, assault and battery and imprisonment shall be brought within two years after the first day of September next, or within two years after the cause of action shall accrue: Actions on the case for words one year after the words spoken, and writs of error shall be brought within five years after [the] first day of September next or within five years after the judgment or order of complaint shall be rendered and not after.* *L. L. T. pt.* 1, *p.* 170, *pass'd* 4*th July. in force* 1*st Sept.* 1807.

Writs of error.

Proviso in favor of infants lunatics, married women, &c.

Sec. 2. *Provided*, That if any person is entitled to any of the before mentioned actions be at the time of the cause of action accruing within the age of twenty one years, a married woman, of unsound mind, or imprisoned, or beyond sea or absent from the United States, such person may bring such action within such times as are before limited after the respective disabilities are removed: *And provided also,* If in any of the before mentioned cases any plaintiff obtains a judgment, which upon appeal or writ of error shall be reversed or any plaintiff shall suffer a non suit, such plaintiff, his heirs, executors or administrators, as the case may require, may commence a new action or suit from time to time, within one year after such judgment reversed, or non suit suffered as aforesaid, and not after. *ib. p.* 171, *ib.*

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* *Action of replevin five years. See Replevin, sec.* 2.

Further proviso.

Sec. 3. All actions, suits, indictments or informations which shall be had sued or exhibited upon any penal law of this territory, the punishment whereof shall be fine and imprisonment, shall be brought within two years after the first day of September next or within two years after the offence committed against such act and not after.* *ib. ib. ib.*

Limitation of indictments & penal actions.

Sec. 4. *Provided,* That if any defendant to any civil or criminal cause herein before recited absconds or conceals himself, or by removal out of the district or territory, where he resided when such cause of action accrued, or by any other indirect means, defeats or obstructs the bringing or maintaining all or any of the aforesaid actions, within the respective times limited by this act, such defendant shall not be permitted to plead this act in bar, to any suit, action, indictment, or information. *ib. p.* 172, *ib.*

Certain cases to which limitations in this act do not extend.

LUNATICS.

See Idiots and Lunatics.

MAIMING.

See Crimes and Misdemeanours, sec. 4.

MAN SLAUGHTER.

See Crimes and Misdemeanours, sec. 2.

MARKS AND BRANDS.

Sec. 1. Every person in this territory, who hath horses, cattle or hogs shall have an ear mark or brand

To be recorded.

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* *Limitation of prosecution, in capital cases, and other crimes. See Crimes and Misdemeanours, sec.* 51.

different from the ear mark or brand of all his neighbours,[*] which ear mark or brand he shall record with the clerk of the district [county,] where his horses, cattle or hogs are; for recording of which ear mark and brand the clerk shall be entitled to demand and receive the sum of twelve and a half cents. *L. L. T. pt.* 1, *p.* 328–329, *pass'd* 4*th Nov.* 1808.

At what ages to brand and mark.

Sec. 2. And every person shall brand horses with said brand from eighteen months old and upwards, and ear mark all his hogs from six months old and upwards, with the said ear mark, and ear mark or brand all his cattle from twelve months old and upwards, with said ear mark or brand. And if any dispute should arise about any ear mark or brand, the same shall be decided by the book of the clerk of the district [county,] where such cattle or horses or hogs are. *ib. p.* 329, *ib.*

Disputes.

Purchasers to brand them with their own brand.

Sec. 3. Where any person shall buy any neat cattle from any other person, or come to the same by gift, will or any other lawful means, then and in such case the person, who has thus gained the same by any of the ways aforesaid, shall within eight months, brand the said neat cattle with his own proper brand in the presence of two credible witnesses, a certificate whereof shall be signed by the said witnesses. *ib. ib. ib.*

Altering or defacing marks or brands.

Sec. 4. If any person or persons shall alter or deface the mark or brand of any other person or persons horse, neat cattle or hog, such person being thereof convicted, by indictment or presentment, shall for every such horse, mare, colt, neat cattle, or hog whose mark or brand he or she shall alter or deface, forfeit and pay the sum of five dollars over and above the value of such horse, mare, colt, neat cattle or hog to the person, whose mark or marks, brand or brands shall be so altered and defaced: *Provided*, He prosecute the same within six months after discovery of the fact committed. *And the offender shall over and above the said fine receive forty lashes on his or her bare back well laid on; and for the second offence shall pay the fine aforesaid, stand in the pillory two hours, and receive not exceeding sixty lashes on his or her bare back well laid on.*[†] And if any person or persons shall mismark or misbrand, any unmarked or unbranded, horse, mare, colt, neat cattle,

Mismarking or misbranding.

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[*] *Not more than one. See post sec.* 8 & 9.

[†] *So much of this section as inflicts corporeal punishment for the crime of altering and defacing marks and brands of horses cattle and hogs is repealed. L. L. T. pt.* 2. *p.* 24. *pass'd Oct.* 30, 1810. *in force* 1 *Jan.* 1811.

or hog not properly his or her own, he or they shall forfeit and pay the sum of five dollars over and above the value thereof for every such horse, mare, colt, neat cattle, or hog so mismarked or misbranded which fines shall be recovered by indictment or action of debt in any court of record within this territory. *ib. p.* 327. *ib.*

Persons concealing the commission of said offences.

Sec. 5. And to prevent the concealing of such offences, if any person or persons shall see any other person or persons, committing any of the crimes aforesaid, and shall not discover the same, in ten days, to some magistrate then and in such case, such person or persons, for not discovering such crimes, or any of them committed, shall forfeit and pay the sum of ten dollars for the use of the district [county], to be recovered by any person or persons who will sue for the same, by action of debt or by indictment or information in any court of record in this territory. *ib. p.* 327—8. *ib.*

What shall be evidence of concealment.

Sec. 6. And because it is difficult to convict any person who has seen such crime committed if he shall deny the same, it shall be sufficient evidence to convict any person, that he has seen such crime committed, if it be proven that he has told any person, that he did see the said crimes or any of them committed. *ib. p.* 328. *ib.*

Killing hogs or cattle in the woods.

Sec. 7. Whereas the common custom in this territory of killing hogs in the woods gives great opportunities to stealing the cattle and hogs of other people: *Be it therefore enacted,* That if any person or persons shall kill any one or more neat cattle or hogs in the woods, he shall within three days show the head and ears of such hog or hogs, and the hide with the ears on of such neat beast or cattle to the next magistrate or two substantial house holders, under the penalty of ten dollars, to be recovered by any person who will sue for the same by action of debt, information or indictment in any court of record in this territory. *ib. p.* 328. *ib.*

No person to use more than one mark or brand.

Sec. 8. No person or persons in this territory shall have or be allowed to use more than one ear mark or brand for his her or their stock, and that no minor living with his, or her parents or guardian, shall have or make use of any ear mark or brand different from his, her or their parent or guardian, nor shall any apprentice or servant make use of any ear mark or brand by which to claim any stock on any pretence whatever. *L. M. T. Dec. sess,* 1815. *p.* 117. *pass'd,* 24 *Jan.* 1816.

Persons using marks or brands not recorded or more than one, &c.

Sec. 9. If any person or persons shall make use of any mark or brand, other than the one he may have recorded, or use more than one mark or brand, or any parent, guardian or master, shall suffer his, her or their son, ward, apprentice, or servant to use a seperate mark or brand for any stock, he, she or they shall forfeit not only the stock so marked, but one half the value thereof besides; to be recovered of him, her or them by indictment, one half to the use of the county and the other half for the informant: *Provided however*, That nothing in this act contained, shall be construed to extend to any stock, that shall have descended or come to any minor, servant or apprentice, by gift or devise from any person or persons, other than his guardian or master: *Provided also*, That the brands and marks of such minor, apprentice or servant shall be recorded in the same manner as other brands and marks are, by law directed to be recorded.* *ib. p.* 117–18, *ib.*

Brands, &c. of minors, &c to be recorded.

MARRIAGES.

Marriages heretofore celebrated made valid.

Sec. 1. All marriages heretofore solemnized in this territory, by any preacher of the gospel, magistrate or regularly ordained clergyman, shall be and the same are hereby declared to be good and valid in law to all intents and purposes. *L. L. T. pt.* 1. *p.* 40. *pass'd* 9*th July,* 1806.

Certificates of marriage to be recorded.

Sec. 2. All such marriages shall within six months from the passing of this act be certified by the person who hath performed the ceremony, or by two or more witnesses, to the clerk of the court of quarter sessions [circuit court] of the district [county] in which such marriage or marriages have been celebrated, who shall commit the same to record in *memoriam rei* and file the said certificate in his office, and shall receive for his services and trouble in so doing the sum of fifty cents for every certificate so recorded. *ib. p.* 40. *ib.*

Clerks fees.

Who to perform ceremony hereafter.

Sec. 3. From and after the passing of this act, it shall be lawful for any preacher of the gospel, magistrate or regularly ordained clergyman, to perform the ceremony of marriage within this territory, to be certified and recorded and the certificate to be filed, and the clerk to be entitled to the same fees, as is provided in the second section of this act. *ib. ib. ib.*

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* *Ante sec.* 1.

MARRIAGE CONTRCTS.

Sec. 1. The same proceedings that are herein before provided with respect to dower,* shall be had for the purpose of carrying into effect the marriage contract that may have been heretofore made, or shall hereafter be made in pursuance of any laws, usages and customs now or hereafter in force within this territory. *L. M. T. Dec. sess.* 1814. *p.* 159. *pass'd* 21, *Jan.* 1815. How carried into effect.

MEASURES.

See Weights and Measures.

MILITIA.

Sec. 1 Every able bodied free white male inhabitant of this territory between the ages of eighteen and forty-five years shall be liable to perform militia duty, to be enrolled by the captain or commanding officer of the company within whose bounds he may reside. Persons liable to militia duty. It shall be the duty of said officers respectively to enrol every such inhabitant, as also such persons who shall from time to time arrive at the age of eighteen years, as well as those persons who come to reside within his bounds or limits. How enrolled And it shall be the duty of the captain or commanding officer of each company to enrol from time to time all those who arrive at the age of eighteen years, and also those who come to reside within his bounds, and shall notify without delay every such person of their enrollment by a non commissioned officer or some other person by whom such notice can be proved: *Provided*, That no person shall be called upon to perform militia duty who has not resided at least two months within this territory, and ten days within the proper bounds of his company, except in cases of actual or threatened invasion, when any such person on proper notice being given may be ordered into service by the captain or commanding officer within whose bounds he may reside, and be subject to the same fines and penalties as are hereafter provided: *And provided also*, That the judges of the general court of this territory, secretary of the territory, and such other persons as are exempted by the laws of the United States, Exempts. to wit, all post-masters, the carriers of the United States' mail, and ferrymen on the United States' post roads, shall be and they are hereby exempt from militia duty.* But it shall be lawful for any of the before mentioned persons thus exempted to accept of commissions in the militia, but on such acceptance they shall forfeit their privileges. *L. M. T. Dec. sess.* 1814, *p.* 3, *pass'd* 18*th Jany.* 1815.

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* See title dower.

Divisions, brigades, regiments, battalions and companies.

How formed.

Rank.

Sec. 2 Said inhabitants shall, under the direction of the commander in chief be formed into divisions, brigades, regiments, battalions and companies, each brigade to be composed of not more than five, nor less than three regiments; each regiment to be composed of two battalions; each battalion of not more than four nor less than two companies and that each company shall be composed of not more than one hundred nor less than thirty two non commissioned officers, musicians and privates: *Provided,* That when any number of militia in a county is not sufficient for a regiment, they shall compose a separate battalion or be formed into independent companies, as the one or the other may be found most convenient. The regiments and battalions shall be numbered by the commander in chief from one upwards, and both shall rank according to their numerical designation. The officers of equal grade shall rank according to their commissions, and when there happens to be two such commissions of equal date, the rank shall be determined by the field officers of the regiment by lot: *Provided,* That at any regimental or battalion muster, the several companies shall form a regiment or battalion according to their seniority, and the same rule shall apply when different corps are assembled together, excepting so far as by custom, usage or necessity the cavalry, artillery or light corps may be detached from the battalions. *ib. p.* 4. *ib.*

Officers.

Regimental staff.

Sec. 3. There shall be appointed and commissioned by the governor, to each company one captain, two lieutenants and one ensign; *to each battalion one major; to each regiment one lieutenent colonel commandant.*† All officers who shall accept of an appointment under this law, and continue to reside within the bounds of their regiments, battalions or companies shall hold their commissions at least four years unless sooner removed by the governor or by the provisons of this act. The regimental staff shall consist of one adjutant, one quarter master and one pay master, to be chosen from amongst the subaltern officers, if fit persons can be found, one surgeon and one surgeon's mate, one sergeant major and one quarter master's sergeant, one drum major and one fife major. And for each company there shall be appointed one sergeant and one corporal for every sixteen men, and in a company one drummer and one fifer. All sergeants and corperals of companies shall be nominated by the captain or commanding officer of companies and appointed by the commanding officer of the corps.* And all the non commissioned staff shall be appointed by the commanding officer of regiments and battalions respectively. *ib. p. 5. ib.*

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* *See also sec.* 47, *by which other persons are exempted.*

† *See post sec.* 60.

Non commissioned officers.

Sec. 4. Each militia man shall provide himself, within one month from the date of his enrollment with a good musket, a sufficient bayonet and belt, or a fusil, two spare flints, a knapsack and pouch with a box therein to contain twenty four cartridges suited to the bore of his musket or fusil. each cartridge to contain a proper quantity of powder and ball: or a good rifle, knapsack, pouch and powder horn with twenty balls suited to the bore of his rifle, and a quarter of a pound of powder. Every enrolled person shall appear so armed, accoutred and provided when called out to muster or into service; except that it shall not be necessary to appear on the parade with knapsacks when called out for exercise only. The commissioned officers of infantry when on duty for parade, exercise, inspection or service shall wear the *uniform of the United States*, and be severally armed with a sword or hanger; and the platoon officers, in addition to the sword or hanger, shall also be provided with an espontoon. And every officer whose duty requires him to be mounted shall be armed with a sword or hanger and a pair of pistols. Every person so providing himself with arms, ammunition and accoutrements required as aforesaid shall hold the same exempt of suits, distresses, executions or sales for debt or damages or for the payment of taxes. And the said militia men as well as the persons composing the light corps hereafter in this act mentioned shall be exempted from arrest both going to and returning from parades, inspections and court martials or rendezvous by order of their superior officer, or in compliance with the provisions of this act, except in case of treason, felony and breach of the peace: *Provided,* That the court

Arms and accoutrements.

Exempt from seizure.

Privileges from arrest.

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* *See also post sec. 60.*

for the assessment of fines shall have power to remit any persons fine not appearing with arms and accoutrements, if it shall appear to the satisfaction of such court that the person is in so reduced a circumstance that he cannot provide himself such arms and accoutrements. *ib p.* 6. *ib.*

Oaths of office

Sec. 5. Any officer commissioned by virtue of this act, shall before he enters on the duties of his office take the oath of allegiance to the United States, and the following oath or affirmation to wit. 'I do solemny swear (or affirm as the case may be) that I will faithfully execute the duties of in the according to the best of my abilities' which oath or affirmation shall be endorsed on the back of the commission by the person administering the same. *ib. p. 7. ib.*

Endorsed on commission.

Notice of musters

Sec. 6. In all cases where the day has not been previously assigned and particularly mentioned at the last preceding muster (which is hereby declared to be legal notice) for the troop, company, battalion, regiment or brigade to assemble on parade for muster, review or inspection, it shall be the duty of the commanding officer of the corps so to be assembled, to cause the orders to that effect to be given to the captains of their respective companies at least ten days before the said parade. and it shall be the duty of the said captains respectively to cause three days previous notice to be given to each individual of the company by an officer or non commissioned officer, or in writing left at his usual place of abode: *Provided however,* That when the commander in chief, the brigadier general, the commanding officer of regiments and battalions, and detached companies for the purpose of repelling invasion or attack, or to aid and support the civil authority shall command the service of the militia, (which they are herein after authorised to do) such previous notice shall not be necessary; but on the contrary every person subject to military duty shall march at a moments warning. *ib. ib. ib.*

Bounds of battalions & companies.

Sec. 7. The lieutenant colonels commandant of the respective regiments shall designate and assign the boundaries and limits of the several battalions: the majors of battalions shall designate and assign the boundaries and limits of the companies, and the field officers of each regiment or a majority of them, authorised by the commander in chief may form new companies as the population increases, or as the public interest may appear to require. The regimental parade grounds

Muster grounds.

shall be fixed by the lieutenant colonel commandant respectively, the battalion parade grounds by the major and the places at which the several companies muster and parade shall be disignated by the respective captains. *ib. p.* 8. *ib.*

Central places to be selected.

Sec. 8. Wherever by this law the power is given to the commanding officers of regiments, battalions or companies to appoint a place for the muster, review or exercise of any regiment or corps, or for the meeting of officers or courts of assessment, it shall be the duty of such commanding officer to choose as central a place for such muster, review, exercise or other meeting as the circumstances of the case will admit. *ib. ib. ib.*

Appearance at musters 10 o'clock.

Sec. 9. Every officer, non commissioned officer, musician and private shall appear at his respective muster field, whether regimental, battalion or company, on the day appointed by ten o'clock in the forenoon, the officers in uniform and armed and equipped, and the privates armed as directed by this act, and not to leave the parade until permitted by the officer commanding the corps. And it is hereby made the duty of the said commanding officers to exercise their respective corps at least three hours of each regular muster day. At every muster each captain or commanding officer of a company shall direct the first sergeant of his company to call the roll in his presence, between the hours of ten and eleven o'clock, and also after the exercise is over and before the men are discharged, it shall also be the duty of such commanding officer to examine every person belonging to the company, note down all delinquencies occurring therein, and make return thereof, of the strength of the company, number of rifles, musquets, bayonets, fusils, and other equipments, to the commanding officer of his battalion, within ten days after such regimental, battalion or company muster as the case may be, at the hour at which the regiment, battalion or company is formed, proceed in like manner to call the names of the commissioned officers of his regiment, battalion or company, examine and note down all delinquencies and make return thereof, together with the reports from the commanding officers of companies: the commanding officers of regiments shall make their reports within twenty days to the commander in chief; the commanding officers of battalions to the commanding officer of the regiment to which he belongs within fifteen days next succeeding such regimental or battalion muster;

Examination of arms, &c

Returns

the commanding officers of independent companies to the adjutant general within thirty days succeeding such company muster. It shall be the duty of the commanding officers of such regiment within thirty days next after a muster of his regiment to cause the adjutant of the regiment to make out a complete return thereof agreeable to such forms as shall be furnished by the adjutant general and transmit the same to the adjutant general. It shall moreover be the duty of the commanding officers of regiments, battalions and companies to make return of all delinquencies in their respective commands to the judge advocate who shall lay the same before the succeeding court martial or court for the assessment of fines. *ib. p.* 9. *ib.*

Delinquencies.

Disobedience of orders at muster.

Disorderly conduct of bye standers.

Sec. 10. If any non commissioned officer, musician or private at any regimental, battalion or company muster shall disobey the legal and proper orders of their superior officers appointed or otherwise act with disorder, or if any bye stander at any such muster shall insult or otherwise molest any officer, non commissioned officer or musician or private whilst on parade or employed on any other service authorised by the laws of this territory, the commanding officer of the regiment, battalion troops or company, as the case may be, may order such person or persons to be put under guard for any time not exceeding three hours, and the said person or persons so offending shall moreover be subject to pay such fines as may be imposed in the manner herein after in this act provided. *ib. p.* 10. *ib.*

Adjutant general

Brigadiers aid

Brigade inspector and quarter master.

Regimental staff.

Duties of brigade inspector

Sec. 11. The governor shall appoint an adjutant general who shall perform all and singular the duties enjoined on an adjutant general by an act of Congress entitled "an Act to provide more effectually for the national defence establishing an uniform militia throughout the United States," and to an act in addition to the act before recited. The brigadier general may appoint one aid de camp and shall appoint one brigade inspector, and a quarter master of brigade to each brigade: *Provided*, That no one person shall hold the office of adjutant general and brigade inspector at the same time. And the commanding officers of regiments shall appoint their regimental staff. It shall be the duty of the brigade inspector to attend the regimental and battalion meetings of the militia in his brigade during the time of their being under arms; to inspect their arms, ammunition and accoutrements and superintend their exercise and manœuvres, and introduce the system of military discipline in this act directed throughout this territory agreeable to law and make returns to the adjutant general of the state of the militia at least twice in each year reporting therein the actual situation of the arms, accoutrements, ammunition of the several corps and every thing which in his judgment may relate to their government and the general advancement of good order and militia discipline. *ib. p.* 11. *ib.*

Officers duties how ascertained.

Sec. 12. Whenever the militia laws of the United States may not have detailed the duties of the respective officers in relation to the discipline of the militia such duty shall be determined by reference to William Duane's instructions. *ib. ib. ib.*

Penalties.

Sec. 13. For compelling observance of the provisions of this act and for the purpose of introducing a proper degree of subordination and discipline in the operations of the militia of this territory the following penalties shall be incurred and inflicted, in the manner hereafter directed, that is to say: the adjutant general or brigade inspector for a violation or neglect of those duties imposed upon them by this act, shall incur a penalty not exceeding one years pay, nor less than three months pay; any commissioned or staff officer failing to perform the duties required of him respecting the appointing and giving notice of regimental, battalion or company musters, or for his non appearance at such muster in uniform and equipped as the law directs, or for his failing to make those reports which by law he is directed to make shall forfeit and pay as follows, that is to say, a commandant of a regiment the sum of fifty dollars; major of a battalion forty dollars: the commanding officers of a company or adjutant the sum of twenty dollars, a lieutenant or ensign the sum of ten dollars, and those officers respectively, moreover be liable to be cashiered at the discretion of a court martial. Each non commissioned officer failing to give notice of any muster when he shall receive orders for that purpose without a reasonable excuse, shall be fined in the sum of five dollars; such non commissioned officer musician or private for failing to attend any muster review or inspection, or for disobeying any order which by virtue of this act his superior officer may give, or for his failing to repair to the prescribed rendezvous with his arms and accoutrements, he being properly warned so to do,

Non commissioned officers

On non commissioned officers and privates or failing to do his duty when there, or absenting himself without a lawful excuse shall forfeit and pay, that is to say, for non appearance on the parade two dollars, and for not being equipped and accoutred as this act directs the sum of fifty cents, and for absence without leave after appearance the sum of two dollars. Every non commissioned officer appointed in pursuance of this act shall serve for the term of one year, or pay a a fine of ten dollars, the payment of which said penalty shall if such person insist on the privilege exempt the person so refusing from the duties of the said office for the space of two years. *ib. p.* 12 *ib.*

Classes

Sec. 14. It shall be the duty of commanding officers of companies to proceed forthwith to divide their companies into classes by ballot from one to three for the purpose of the regular routine of duty when called into actual service, and return a roll of each class, and the number in rotation within thirty days thereafter, to the commanding officer of the battalion who shall transmit the same to the commanding officer of the regiment, who shall cause the same to be recorded by the judge advocate, and the commanding officer of the regiment or battalion shall make a return of the same to the adjutant general: *Provided*, That every non commissioned officer and private of the militia who shall have performed the last tour of duty by order of the United States shall be set in the third class as near as circumstances will admit. And if there are any that have not performed a tour of duty, they shall be set in the first class, and those who have performed the oldest tour of duty in the second class, as near as circumstances will admit, any thing in this act to the contrary notwithstanding. Every militia man moving out of one company into another shall apply to the commanding officer of the company to which he did belong, who shall give him a certificate certifying the class wherein he was arranged, and whether he had served his tour of duty or not, and also the date and time of such service; which certificate the said militia man shall produce to the captain or commanding officer of the company into whose bounds he shall so have removed, within five days after his residence in the bounds of such company, and such officer is hereby required to enrol him in his numerical class specified therein. And every militia man so removing and failing to produce such certificate shall be arranged and enrolled in the class des-tained to perform the next tour of duty. And if any captain or commanding officer of any company shall refuse to grant such certificate upon application made to him for that purpose, he shall, for such refusal forfeit and pay a sum not exceeding ten dollars, to be recovered and applied as other fines by this act directed. *ib. p.* 13. *ib.*

Substitutes.

Sec. 15. If any person shall be called upon to perform a tour of duty such person shall be acquitted provided he furnish his commanding officer with an able bodied substitute in his room or stead. No substitute shall be received unless armed as by this law directed: but if any substitute in his own turn should be called into actual service previous to the expiration of the time for which he shall have been enrolled, then the person procuring said substitute shall march in his room or procure a substitute for the remainder of the time, or be liable to the same penalties as if called upon in his own name. Any person called upon to perform a tour of duty as aforesaid, and serving by himself or substitute, or otherwise paying such fine as the court martial shall adjudge adequate to the offence such person shall not be bound to perform any tour of duty until regularly called upon in rotation. *ib. p,* 14. *ib.*

Governor may order militia into service.

Sec. 16. When it may be necessary to call into actual service any part of the militia on actual or threatened invasion of this territory or any of the neighboring states or territories it shall and may be lawful for the governor to order into actual service such part of the militia as the exigency may require; and when any part of the militia of this territory shall be called into actual service it shall be the duty of the commander in chief to order from the regiment or battalion from which the militia shall be detached in proportion to the number of men furnished by said regiment or battalion a sufficient number of officers giving preference to the senior officers of said regiment or battalion, to officer said detachment.* And in all cases the officers of the militia of this territory shall be called on to perform their tours of duty in rotation in the same manner as is by this act directed for the several classes of the militia: *Provided however*, That no militia man shall be compelled to serve more than six months at one time, and that sixty days shall be accounted one tour of duty. *ib. p.* 15. *ib.*

Detachments to be officered

How.

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* *See post sec* 55.

On invasion actual or threatened.

Sec. 17. If any sudden invasion shall be made or threatened to be made into this territory by indians or any other power, the commanding officer of the regiment, battalion or company where the invasion is made or meditated is hereby authorised and required to order out the whole or any part of the militia, according to classification, of his county, as he may think necessary for repelling such invasion, and shall call on the commanding officer of the adjacent county for such aid as he may think necessary who shall forthwith furnish the same. And it shall be the duty of every commanding officer of a county on receiving information of the invasion of his or any neighbouring county forthwith to give notice of the same by special messenger or otherwise to the governor of the territory. that he may make the necessary arrangement for repelling the same. And if any officer, non commissioned officer, musician or private shall neglect or refuse to appear upon the order of the commander in chief, brigadier general or other officer duly authorised as above, such delinquent shall forfeit and pay at the discretion of a court martial for the assessment of fines, a sum not exceeding one years pay nor less than three months pay, as established for the compensation of the service of such person when in actual service. The militia when in actual service of the territory shall be governed by the rules and articles for governing the armies of the United States. *ib. p.* 16. *ib.*

Local officer to order out the militia.

Other duties.

Sec. 18. If any officer shall misbehave or act with insubordination, or in disorder, or in violation of the foregoing provisions whilst on parade, or assembled for review, muster or inspection or any other duties authorised or required by this act, he shall be immediately arrested by the commanding officer present and report to the brigadier general or commander in chief, who for this as well as all other violations of this act shall order a court martial or court of enquiry for the investigation of the officer or trial as the case may appear to require. Every officer to be tried by a court martial shall have ten days notice given him of the time and place appointed for the trial and shall have a copy of the charges exhibited against him ten days at least before the sitting of the said court. In every court martial for the trial of an officer not less than two thirds of the members present shall agree in the sentence or judgment of said court, otherwise the per

Courts martial.

Regulations.

son charged shall be acquitted. And when the members shall be required to give their votes on a question or decision, they shall begin with the youngest in commission: *Provided,* That no commissioned officer shall be allowed to resign his commission whilst under arrest. *ib. ib. ib.*

Guards at musters.

Sec. 19. When a brigade, regiment or battalion assemble for review, inspection or exercise, the commanding officer shall order a guard of a subaltern or sergeant and such number of men as he may deem necessary, whose duty it shall be to receive and guard all such persons as shall be ordered under their charge by the commanding officer or inspector for misbehaving or refusing to attend to discipline in exercising and performing all those evolutions and other duties which may be required of them by this law. *ib. p. 17. ib.*

Misconduct of officers.

Sec. 20. If any officer shall be guilty of a breach of this law or in any respect neglect or violate his duty, or be guilty of any ungentlemanly conduct, he shall be heard, tried and if found guilty sentenced at the discretion of a court martial. *ib. p. 18. ib.*

Parents bound for the fines of minor children, masters for servants, &c.

Sec. 21. Parents shall be bound for payment of fines incurred by their sons under the age of twenty one years, guardians for the payment of fines incurred by their wards, and masters or mistresses for the payment of fines incurred by their servants or apprentices, and they shall be respectively charged therewith by the court of assessment accordingly. *ib. ib. ib.*

Register of officers to be kept by adjutant.

Sec. 22. It shall be the duty of the adjutant of each regiment to keep a register of the officers belonging to his said regiment for courts martial and courts for the assessment of fines. *ib. ib. ib.*

Regimental staff now nominated

Sec. 23. A majority of the field officers of each regiment with the commandant shall nominate fit persons within their bounds to the governor of the territory, one as adjutant, one as paymaster, and one as judge advocate of the regiment and the governor shall, if he thinks said persons respectively qualified, appoint and commission them for their several duties. It shall be especially the duty of the judge advocate to prosecute in behalf of the United States and also perform such other services as are by this act prescribed. *ib. ib. ib.*

Fines formerly received how to be delivered over or recovered.

Sec. 24. It shall be the duty of the paymaster of each regiment, independently of such duties as may be required of him by the commander in chief when called into actual service, to demand and receive from the different persons who have heretofore acted as sheriffs or pay masters, as well as those sheriffs who are now in office all monies which they have respectively received, or ought to have received as militia fines. And in case such paymaster shall neglect or refuse to pay the amount of fines, so by him collected, or which ought to have been collected on demand being made by the paymaster of the regiment of the county of which he is or has been sheriff or paymaster it shall be lawful for such paymaster, on giving ten days previous notice to such sheriff or paymaster within or out of office to recover judgment in a summary way by motion against such sheriff or paymaster, in the name of the paymaster, for the use of the said regiment to which he may belong, in any court of record in the county in which said sheriff or paymaster may reside.

How money to be drawn out of the hands of the paymaster.

Also to receive and receipt for all monies collected for fines and forfeitures within his regiment, and safely to keep the same until drawn out of his hands by the commanding officer of the regiment or battalion to which he may be attached, which said warrant shall be given in writing by the said commanding officer for the use of the said regiment or battalion, specifying the object to which the monies so drawn for are to be applied.

Judge advocate to transmit to paymaster sentences and assessments.

The judge advocate shall transmit to the paymaster all the sentences of assessment or appropriations, which shall from time to time be made by the court martial or court of assessment, and it shall be the duty of the paymaster to receive and file the same.

Bond of paymaster.

The paymaster shall, previously to entering on the duties of his office, in addition to his other qualifications prescribed by this act, execute a bond to the governor of the territory with security to be approved of by the commandant of the regiment in the sum of *one thousand dollars** for the faithful discharge of his duties as paymaster. And he the said paymaster shall annually in the month of May settle with the field officers of his regiment or a majority of them the amount of all monies received and disbursed by him, and he shall be entitled to seven per centum for all monies so by him received and disbursed or paid out as above mentioned;

Statement of Paymasters accounts.

immediately after which settlement it shall be the duty of such paymaster to report fully and at large a detailed statement of his accounts to the adjutant general and also to the commanding officer of his corps.† *ib. p.* 19. *ib.*

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* *Three thousand dollars. See post sec.* 49. †*See post sec.* 48

Sec. 25. *Repealed.*

Gen. court martial by whom ordered.

Sec. 26. The commander in chief or the brigadier general shall, when they or either of them may think proper, order general courts martial composed of officers of any regiment or battalion, or from different regiments or battalions which said officers shall assemble at such place as the commander in chief or brigadier general shall appoint, and shall have power to hear, try and determine all complaints arising under this act which may be brought before them, but the sentence of such court shall not be final until aproved or disapproved by the commander in chief. And the brigadier general may order extraordinary courts martial for the assessment of fines within any regiment or battalion, at such time and place as may be necessary: *Provided,* That the said court shall not set for any one regiment or battalion more than three times in each year and that notice of the time and place of the sitting of such court to be given at a battalion or company muster, and the proceedings of such court shall not be final until approved or disapproved by the commander in chief: *Provided also,* That the commander in chief shall when he thinks it necessary to promote discipline or to enforce obedience with good order within the provisions of this law, order courts martial for the assessment of fines within any regiment, battalion or company, composed of such officers of the corps as the adjutant general shall direct for the service, not exceeding eight nor less than four commissioned officers, causing previous notice to be given at a regimental, battalion or company muster, or by an officer or non commissioned officer in person, or in writing left at the usual place of abode of delinquents, or persons charged with a violation of this law, or the militia laws of the United States, which courts shall hear and determine all cases which shall come before them respectively. *ib. p.* 21. *ib.*

For assessment of fines.

Regimental courts martial.

Sec. 27. The commanding officers of regiments and separate battalions shall have power to order regimental courts martial for the trial of captains and subalterns, the sentence of which shall not be final until approved or disapproved by the commander in chief.* *ib. p.* 22. *ib.*

Court for assessment of fines.

Sec. 28. The day succeeding a regimental or battalion muster, a court for the assessment of fines shall be held by the commissioned officers of such regiment or battalion or any five of them. The highest officer in rank of such regiment or battalion that may be present shall be president. And the said court when convened shall have power to enquire into inability and delinquencies that may have happened at the preceding muster, and also all neglects or omissions of officers as well as privates; to hear and determine all appeals which shall be made by non commissioned officers and privates who may think themselves aggrieved by any sentence of their company court for the assessment of fines. The judge advocate shall act as clerk to each regimental and battalion court martial or court for the assessment of fines to which he belongs, and shall record in a book to be by him kept for that purpose the whole proceedings of such court, which proceedings at the close of each court shall be signed by the president of such court martial or court for the assessment of fines and countersigned by the judge advocate. The judge advocate shall be exempted from parade duty, and have an allowance made by the court not exceeding two dollars per day. It shall be the duty of commandants of regiments and battalions from time to time to certify to the paymaster, the amount of such sum as the judge advocate may be entitled to and to issue a warrant for the payment thereof. *ib. ib. ib.*

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* *See post sec* 52.

Powers.

Judge advocate to act as clerk.

Pay certified.

Oaths of the assessment court.

Sec. 29. The president of such court assembled for the assessment of fines and the punishment of delinquencies shall administer to the judge advocate the following oath or affirmation, to wit: 'You solemnly swear (or affirm as the case may be) that you will faithfully execute the office of judge advocate to this court, that you will keep an exact record of all their proceedings from time to time, and not disclose or discover the opinion of the court (when secrecy may be required) until approved or disapproved by the commander in chief, and that you will not disclose the opinion of any particular member unless called upon to give evidence in a court of justice.' The judge advocate shall then administer to the president and members of said court the following oath or affirmation, to wit: You solemnly swear (or affirm as the case may be) that you will assess all fines according to law and evidence to the best of your understanding without partiality, favour or affection.' *ib. p. 23. ib.*

Judge advocate to deliver lists of fines.

Sec. 30. The judge advocate shall make out four fair and authenticated copies of all fines assessed by a

Sheriff to collect said fines.

How appropriated and accounted for.

court martial or a court for the assessment of fines, and deliver such lists to the commanding officer of the regiment to which he belongs, one of which the commanding officer shall transmit to the adjutant general, one to the sheriff of the county, one other to the paymaster, and one other he shall retain for his own use. The sheriff shall receipt for such list to such commanding officer and proceed to collect the amount of such fine contained in such list in the same manner as other monies are collected by execution from any court of record, and be entitled to the same fees and commission to be paid by the delinquent as is allowed on other executions.* And the said fines when collected shall be paid over by the sheriff to the paymaster of the regiment. And all fines imposed and collected by virtue of the provisions of this act shall be appropriated and disposed of as follows; the pay of the judge advocate and the necessary sum for the purchase of colours, drums and fifes, and all other necessary expenditures under this act shall be first deducted from the amount of the said fines, and other monies in the said paymasters hands. And if there should remain any balance of money in said paymasters hands he shall be obliged to pay the same over once a year into the county treasury for the use of the county where he resides, and the said county treasurer shall receipt for the same. The commandant of the regiment or battalion shall on settlement with the paymaster take a copy of such receipt and certify it to be such and deliver it to the clerk of the county court who shall preserve the same as evidence against such county treasurer. *ib. p. 24. ib.*

Oath of witness.

Sec. 31. Whenever an oath or affirmation shall be administered by the judge advocate to a witness, the said oath or affirmation shall be in the following form, to wit: 'You swear (or affirm as the case be) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth and nothing but the truth.' *ib. p. 25. ib.*

Judge advocate pro tem.

Provost martial.

Sec. 32. When a judge advocate shall fail to attend a court martial, or court for the assessment of fines, such court shall appoint a judge advocate pro. tem. to act in his place. On the assembling of any court martial or court for the assessment of fines, the president thereof shall appoint a provost martial, whose duty it shall be to execute the commands of the court, and keep any bye stander from interrupting the court whilst sitting. And if any person appointed as provost martial shall neglect or refuse to act as such without making a reasonable excuse for such neglect or refusal such person shall be fined in any sum not exceeding five dollars, at the discretion of the court martial making such appointment. And any person behaving in an indecent, provoking or riotous manner before the court when sitting shall be fined at the discretion of the court not less than four nor more than ten dollars. The president of any court martial or any general or field officer shall have power to issue summons to compel the attendance of witnesses, which said summons may be executed by such person as the general or field officer shall appoint or by the provost martial under the direction of the court. And if any witness after being summoned shall fail to attend the said court at the time and place mentioned in the summons he shall be fined by the said court if no reasonable excuse for such absence can be assigned in a sum not exceeding five dollars at the discretion of the court. The court may moreover award an attachment to compel the attendance of such witness, and the said fine shall be collected and accounted for and appropriated in the same manner, as other militia fines. All courts martial shall have power to adjourn from time to time, if it be necessary for them so to do: *Provided*, That such adjournment shall not be for a longer period than thirty days. *ib. ib. ib.*

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* *Post sec. 53—54.*

Fine for disorderly conduct.

Witness how summoned.

Failing to attend how compelled.

Fines how appropriated

Adjournment of courts martial.

Judge advocates neglect of duty fined.

Sec. 33, On the refusal or neglect of the judge advocate faithfully to perform such duties as are by this act assigned him he shall be fined at the discretion of a court martial not exceeding fifty dollars. *ib. p. 26. ib.*

Forms.

Sec. 34. The necessary forms of courts martial which may not be expressed in this act shall be such as are established by the articles of war. *ib. p. 27. ib.*

Sec. 35. *Repealed*,

Independent and light companies.

Sec 36. When in the opinion of the commander in chief such corps can be conveniently raised and equipped, independent troops of horse and companies of artillery, grenadiers, light infantry and reflemen may be formed. And the said companies or corps shall choose their own officers, and be armed and wear such uniform as the officers of such company or a majority of them shall direct. And individuals composing light companies shall not be subject to fines for not attending muster in their former companies. After an independent company is formed agreeably to law, no per-

Regulations

as to the formation.

son belonging to such company shall be permitted to join any other company so long as he resides within the bounds of the regiments battalion or light company to which he belongs, unless after six months notice to the commanding officer of such company of his intentions to withdraw from such company or with the permission of the individuals composing the same: *Provided however*, That no person shall enrol himself in any light infantry or rifle company out of the bounds of the battalion to which he belongs. All artillery companies hereafter to be raised shall be attached to the regiment in the bounds where the captain commanding the same may reside, and be subject to the rules and regulations of the said regiment. *ib ib. ib.*

Artillery companies.

Regulations as to the government of the light companies.

Sec. 37. All persons desirous of forming troops or companies of horse or artillery and who shall associate themselves shall subscribe certain rules and regulations for their government, which, when sanctioned by the commander in chief shall be binding on them. All such volunteer companies shall act, muster and parade by the special order of the adjutant general or commander in chief independently of and in addition to those duties which they are bound to perform by the company regulations and by the provisions of this act. Every trooper who shall enrol himself for this service, having furnished himself with a horse, uniform clothing and other accoutrements shall hold the same exempted from taxes and all civil prosecutions during his continuance in said corps: *Provided nevertheless*, That when any officer or private of any troop of horse shall keep and use a stud horse in said troop, no more than the tax of an ordinary horse on the list shall be exempted: *Provided*, That all such horses and accoutrements shall be registered with the purser of the troop or company, which officer shall be recommended by the troop and commissioned by the governor. It shall be the duty of the purser to act as clerk, to keep a list of all delinquencies, receive all fines and appropriate them agreeable to such rules as shall have been adopted by the said troops, it shall moreover be the duty of the purser to keep a list of the distribution of all public armes, ammunition, accoutrements military, take a receipt for the same and make a report to his captain or commanding officer every two months of all delinquences, and of all monies received, paid out and remaining in his hands. Also all public stores and e-

Exemptions of accoutrements from taxes &c.

Purser to register accoutrements.

To act as clk.

His various duties

quipage belonging to the company and receive for his services such compensation as may be allowed by the said company. The commanding officers of troops, companies and light corps shall make a full report of the state thereof, every six months to the commander in chief. *ib. p.* 28. *ib.*

U S militia laws.

Sec. 38. In all cases not specially provided for in this act, the several acts of congress providing for the national defence by establishing an uniform militia throughout the United States shall be observed by the militia of this territory, *ib. p.* 29. *ib.*

Sheriff may demand a militia guard in certain cases.

Sec. 39. Whenever in any of the several counties of this territory the sheriff shall make report to any one or more judges or justices of the peace that he hath in his custody one or more persons charged with any capital offence against the laws of the United States or of this territory, and that the jail of such county is in his opinion insufficient for the safe keeping of such prisoners, the judge or judges, justice or justices or any one of them if a judge of the territory, or any two of them if justices of the peace of the county; if in his or their opinion the said report of the the sheriff be correct shall forthwith, together with the sheriff of the county certify the same to the commanding officer of the militia of the county or regiment for the time being, and it shall be the duty of the said commanding officer thereupon to order out of the militia a suitable number of officers, non commissioned officers and privates (sufficient for guarding and safe keeping such prisoner or prisoners,) by regular rotation of duty in such manner and for such time as shall be the least inconvenient and burthensome to the militia, and at the same time consistent with the safe keeping of the prisoner or prisoners. If any officer shall refuse to obey such order, he shall be subject to be tried by a court martial; and be punished as by this act directed for disobedience of orders. And if any non commissioned officer or private shall disobey he shall be fined by the proper court the sum of three dollars to be assessed, collected and appropriated as other militia fines.* *ib. ib. ib.*

Sec. 40 *Repealed.*

Adjutant to instruct.

Sec. 41. It shall be the duty of the adjutant of each regiment to attend at the times and places appointed by the commander of such regiment as aforesaid and instruct the officers as aforesaid, and if such officers

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*See also sec. 66.

Fined for non attendance.

shall fail to attend without a reasonable excuse they shall be fined at the discretion of a court for the assessment of fines in any sum not exceeding thirty dollars. It shall be the duty of the adjutant of each regiment to make a return of such delinquent officers, if a field officer to the commander in chief who shall proceed against such delinquent according to law; and if an inferior officer to the judge advocate who shall lay the same before the next court for the assessment of fines, who shall proceed thereon as directed by this act. *ib. p.* 30. *ib.*

Musters by companies battalions regiments.

Sec. 42. The militia shall muster four times by companies; on the first Saturdays of April, June, August and October, and by battalions twice, annually, once in the month of April, and once in the month of October, on such day in each month as may be appointed by the commander in chief.* And once annually by regiments at such time as the commander in chief may appoint, unless the commander in chief shall dispense with the same: *Provided nevertheless,* That the commander in chief may order as many additional company, battalion or regimental musters as he may think proper for the good government of the militia and the safety of the territory. *ib. p.* 31. *ib.*

Company courts for assessment of fines.

Appeals.

Account and appropriation.

Sec. 43. The captain and subaltern officers of each and every company or a majority of them shall on the muster day next succeeding the muster of each company at which there has been any delinquency or delinquencies hold a court for the assessment of fines in each company, and any person thinking himself aggrieved by the decision of such court shall have liberty to appeal to the next regiment or battalion court for the assessment of fines. And the commanding officer of a company shall issue his warrant, directed to one of the sergeants of the company commanding him to cause the fine or fines to be made. And such sergeant shall be authorised to levy and make distress and sale of the goods and chattels of such delinquent and return the overplus if any to the person whose property he may sell as aforesaid.† All fines collected by the provisions contained in this section shall be paid to the captain of such company in ten days after the same may be collected, and by him applied for the purpose of purchasing a drum, fife and colours, and for other purposes for the use of his company. *ib. ib. ib.*

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* *See post sec.* 58. † *See post sec.* 59.

Vacancies in the offices of brigade inspector, quarter master, adjutant, paymaster, judge advocate, how filled.

Sec. 44. In all cases where vacancies may happen of a brigade inspector, brigade quarter master, adjutant, paymaster or judge advocate which may not be filled for the want of proper officers to make such appointments, as are authorised under the provisions of this act, or in case of their neglect, the commander in chief shall make such appointments as may appear to him proper to supply such vacancies. *ib. p. 32. ib.*

Pay of adjutant general, inspector.

Sec. 45. The adjutant general shall receive fifty dollars per annum in full compensation for his services, and each brigade inspector shall receive three dollars per day for each day he shall attend any muster, and three dollars for every thirty miles he shall have to travel in full compensation for his services to be paid by the territorial treasurer, out of any monies in his hands not otherwise appropriated. And the said inspector shall file with the territorial auditor an account on oath of the number of days he has attended and the number of miles he has travelled, on receiving which the territorial auditor shall give him a certificate on the territorial treasury for the amount of his wages as aforesaid. The adjutant of each regiment shall receive for his services two dollars per day for each day he is obliged to attend to discharge the duties imposed on him by this act, out of any monies in the county treasury in which he resides on a certificate of the commander of the regiment certifying the number of days, said adjutant is entitled to receive pay for. The provost martial shall receive two dollars per day out of the militia funds of the regiment, battalion or company in which he has performed duty, on the certificate of the president of the court martial. *ib. ib. ib.*

Regimental adjutant's pay

Provost martial's pay.

Copies of this act to be supplied to militia officers.

Sec. 46. Every commissioned officer of the militia shall be furnished with a copy of this act at the expence of the territory. And it shall be the duty of every officer upon his going out of office to deliver over to his successor in office all the books and forms that he has been furnished with by the territory, and also all books and papers that are in his possession and belonging to his brigade, regiment, battalion or company, and upon neglect or refusal shall forfeit and pay twenty dollars per month for every month he shall so neglect or refuse, after said books and papers have been demanded by his successor, to be recovered before any general or regimental court martial, and appropriated as other monies. And it shall moreover be the duty of every captain or commanding officer of a

Books, papers, &c. to be delivered to successors.

company to cause this act to be read on parade to his company, at least once in every year. *ib. p.* 33. *ib.*

Other persons exempted from militia duty.

Sec. 47. All judges of the circuit courts, clerks of the superior or circuit courts, sheriffs, ordained, ministers of the gospel, teachers of public seminaries, and keepers of jails are hereby exempted from militia duty, except in time of war, or insurrection, in addition to those exempted by the first section of the act to which this act is a supplement.* *L. M. T. Dec. sess.* 1815. *p.* 97: *pass'd* 24*th Jan.* 1816.

Duties assigned to the paymaster.

Sec. 48. The paymaster shall semi-annually in the months of May and November settle with the field officers of his regiment or a majority of them for the amount of all monies by him received and disbursed or paid out as is directed by the act to which this act is a supplement, immediately after which settlement it shall be the duty of such paymaster to report fully and at large a detailed statement of his accounts to the adjutant general and one also to the commanding officer of his corps. *ib. p.* 98. *ib.*

Paymaster to pay over.

Sec. 49. It shall be the duty of the paymaster of each regiment within three monts after he shall make his settlement with his field officers, to pay over to the county treasuries respectively all monies remaining in his hands and not previously drawn out by the field officers for colours, drums, &c. as is by law contemplated: *Provided,* That the paymaster in lieu of the bond contemplated by him to be given by the twenty-fourth section of the law to which this is a supplement† with a penalty of one thousand dollars, shall give a bond as is by that section provided in the penal sum of three thousand dollars, which bond shall be given on or before the first day of July next. *ib. ib. ib.*

Bond to be given by the paymaster.

Composition of a general court martial.

Sec. 50. All general courts martials shall consist of a president and a judge advocate, and not more than twelve nor less than six members who shall be appointed under the authority of the commander in chief, the brigadier general or commanding officer of the brigade, and that all regimental and battalion courts martial shall be composed of a president and a judge advocate, and not more than six, and not less than four members appointed as herein after directed, and when the court martial is convened the president shall administer the following oath or affirmation to the judge advocate, to wit:‡ You do swear (or affirm) that you

Of regimental and battalion court martial.

Oath to be ad

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* *Ante sec.* 1. † *Ante sec.* 24. ‡ *Compensation. See post sec.* 63.

ministered to the judge advocate.

will faithfully execute the office of judge advocate to this court for the prisoner or prisoners, as the case may be, to be tried to the best of your abilities and understanding, and custom of war in like cases, and that you will not disclose or discover the opinion of this court martial until approved or disapproved by the commander in chief (the brigadier general the commanding officers of the brigade, the lieutenant colonel commandant, or the major as the case may be) and that you will not at any time discover the vote or opinion of any particular member, unless called upon by a court of justice to give evidence thereof in due course of law, the judge advocate shall then administer to the president and afterwards to every member the following oath or affirmation, to wit: You do solemnly swear (or affirm) that you will, well and truely try and determine according to evidence and the best of your understanding and the custom of war in like cases, between the United States and the prisoner to be tried, and that you will not disclose or discover the opinion of this court until approved or disapproved by the commander in chief, (the brigadier general, the commanding officer of the brigade, the lieutenant colonel commandant or the major as the case may be) nor at any time disclose the opinion of any particular member of this court unless called upon to give evidence thereof in due course of law. *ib. p.* 99. *ib.*

Oath to be administered to the president and members of the court martial

Sentence of the courts martial to be approved by the officer ordering the court.

Sec. 51. The sentence of general and regimental or separate battalion courts martial and courts for the assessment of fines shall be final when approved or disapproved by the officer ordering the court; *Provided further*, That when an officer orders another of inferior grade under an arrest, the officer that shall compose the court martial shall be chosen by the next field officer in rank, that when an officer is sentenced to be cashiered, the sentence shall not be final until approved or disapproved by the commander in chief. *ib. p.* 100, *ib.*

Courts martial appointed by the commanding officers.

Sec. 52. At each regimental or battalion muster it shall be the duty of the commanding officer on parade to appoint a time and place for a court martial to sit, which shall convene within twenty days, and sit no longer than five days for the assessment of fines, to designate a president for the same who shall in all cases be a field officer or captain, and to cause seven officers to be detailed and warned to serve on the same, any four of whom, with the president shall form a court for the assessment of fines, with full power to hear and determine on all cases of inability and delinquencies, that may have happened at the preceding musters, and also all neglects or omissions of officers, as well as musicians and privates, to hear and determine all appeals which shall be made by non commissioned officers and privates, who may think themselves agrieved by any sentence of their company court for the assessment of fines. *ib. ib. ib.*

Sheriffs will pay the amount of fines collected by them to the paymaster

Sec. 53. It shall be the duty of the sheriff of each county, ninety days after the list of fines assessed by a court martial or court for the assessment of fines has been transmitted to him for collection to pay over the amount of such fines to the paymaster of the regiment; and in case said sheriff shall fail or neglect to collect and pay over the same according to the provisions of this act and the act to which this act is a supplement, such delinquent sheriff shall be charged by the paymaster with the sum of five per centum per month on the sum or sums he has thus failed to account for; *Provided*, That it shall be the duty of commanding officers of regiments or separate battalions to give credit to said sheriff for the amount of the sum or sums he shall not be able to collect on accounts of delinquencies, he shewing on oath that he has used his best endeavours to collect the same. *ib. p.* 101. *ib.*

Persons fined going to reside in another county, &c.

Sec. 54. In case any person fined as provided by this act shall go to reside in another county without having complied with the sentence of the court martial or court for the assessment of fines, it shall be the duty of the officer commanding the regiment or separate battalion in which the delinquent was enrolled, to forward a copy of the said sentence to the sheriff of the county where said delinquent is residing when known. And it shall be the duty of said sheriff to have the same collected and returned within six months, to the paymaster of the regiment where such delinquent was fined. *ib. ib ib.*

Orders given by the commanding officers shall be obeyed.

Sec. 55. All orders given by the commander in chief of this territory in pursuance of this act and of the act to which this act is a supplement through his aid-de-camps or the adjutant general, or directly from himself shall be obeyed and respected throughout this territory, and that all orders given by each brigadier general in his brigade; in pursuance of this act or of the act to which this act is a supplement, through his aid-de-camp or brigade inspector or directly from himself, and all orders given by the commanding officer of a brigade through the brigade inspector or directly from himself shall be obeyed and respected throughout his said brigade. *ib. p.* 102. *ib.*

If no jail, sheriff shall grant a guard.

Sec. 56. Whenever in any of the several counties of this territory, the sheriff shall make report according to the form prescribed by the thirty-ninth section of the act to which this act is a supplement,* that he has in his custody one or more persons charged with any capital offence against the laws of the United States or of this territory and that there is no jail in said county, a guard shall be granted according to the provisions of the aforementioned section. *ib. ib. ib.*

Sec. 57. *Repealed.*

Militia shall muster by battalions twice annually.

Sec. 58. The militia shall muster by battalions twice annually, once in the month of April and once in the month of October, on such day in each month, as shall be appointed by the brigadier general or officer commanding the brigade. *Provided however*, That when the commanding officer of regiments or battalions are so distantly situated as not to receive orders for battalion musters, from the officer commanding the brigade before the fifteenth of March for the battalion muster of the month of April, and before the fifteenth of September for the battalion muster of the month of October, and in all cases when the order for a regimental muster may not be received by the commanding officers of regiments or separate battalion in the month of July, the commanding officer of regiments or separate battalion is hereby authorised, if he thinks proper to order a regimental or battalion muster at such time as he may think proper and such orders so made shall have the same force and effect as if made by the brigadier general. *ib. p.* 103, *ib.*

Commanding officers authorised to order musters.

Company fines to be collected by the constable, &c.

Sec. 59. In all cases of company fines, the commanding officer of a company shall issue his warrant to the constable of the township where such commanding officer resides, commanding him to cause the fine or fines to be made, and such constable shall be authorised to levy and make distress and sale of the goods and chattels of such delinquent and return the overplus (if any) to the person whose property he may

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*[*] *Ante sec.* 39.

sell as aforesaid, and where a captain of a company shall be dismissed, resign or in any way go out of office, it shall be his duty to pay over to his successor in office, all monies which he shall have received for company fines and not appropriated, together with the list of fines, still due and not collected; and the officer receiving such lists of fines, shall proceed to have the same collected in the same way as the officer from whom the same was received could or ought to have done. *ib. ib. ib.*

Field officers

Sergeants and corporals.

Lt. col. to act as major.

Sec. 60 Hereafter the field officers of each regiment in this territory, shall consist of one colonel commandant, one lieutenant colonel and one major to be commissioned by the governor, subject to the same restrictions and provisions as are now provided by law, for the appointment of officers, and that hereafter all serjeants and corporals, shall be appointed by the captains or commanding officers of companies respectively, and the lieutenant colonel shall perform all the duties of a major, to the first battalion of the regiment to which he belongs according to law. *ib.* 1816. *p.* 82. *pass'd* 31 *Jany.* 1817.

Meeting of the officers for drill.

In April and October.

Adjutant's duties,

At

Drill muster's

Fines for non attendance.

Sec. 61. Hereafter the commissioned officers, non commissioned staff, non commissioned officers and musicians; of each battalion, shall appear twice in each and every year at the usual place of holding battalion musters, in their respective battalions, in the months of April and October, the day to be named by the major or commanding officer of the battalion for the purpose of being drilled and instructed in the military duties as the law directs, and the adjutant shall attend and perform the duties required of him by the act reducing into one the several acts regulating the militia, and if the adjutant does not attend such drill muster, then it shall be the duty of the senior officer present to perform the duties which are required to be performed by the adjutant and such drill muster shall continue two days successively, and all commissioned officers, non commissioned staff, non commissioned officers and musicians, who shall fail to appear at any drill muster for the purpose of being instructed in the military duties so directed by this act, shall be proceeded against, and fined in the same manner, as is provided by the several acts to which this is a supplement. *ib. ib. ib.*

Sh'ffs. fees.

Sec. 62. From and after the passage of this act, the sheriffs fees for the collection of fines, shall be ten per centum on the amount of fines collected: *Provided however*, That in all cases when property is executed and sold the sheriff shall have the same fees and commission to be paid by the delinquent as is allowed on executions. *ib. p.* 82. *ib.*

Allowance to members of courts martial. Gen. court.

Sec. 63. There shall be allowed to the members of courts martial the following compensation, viz. To members of general courts martial the sum of two dollars per day, for each and every day they shall be employed in said court, to be paid out of the territorial treasury on the certificate of the judge advocate, countersigned by the commander in chief, brigadier general or officer ordering the same, and the members of a regimental court martial shall be allowed the sum of one dollar and fifty cents per day, for each and every day they may be employed on said court on the certificate of the judge advocate countersigned by the colonel or officer ordering the same to be paid by the county treasurer. *ib. ib. ib.*

Battalion court.

MILLS AND MILLERS.

Rates of toll for water mills.

Sec. 1. The owner or occupier of every water or grist mill within this territory shall be entitled to receive the one eighth part of all wheat, rye or buckwheat when ground and boulted, and one eighth part of all other grain when ground into meal. And the owner or occupier of any horse mill shall in like manner receive the one fifth part of all wheat, rye or buckwheat, when ground and boulted, or the one sixth part when ground only. And the one fourth part of all other grain when ground into meal, when the owner of the mill finds the team for grinding the same; and when the team for grinding shall be furnished by the owner or owners of the grain, and with the consent of the owner or owners of the mill, the toll shall be the same as is allowed to the owners or occupiers of water mills and no more. *L. M. T. Dec. sess.* 1813. *p.* 4, *pass'd*, 30 *Dec. in force* 1. *May*, 1814.

Horse mills.

Millers to keep rates of toll set up in their mills.

Sec. 2. It shall be the duty of each and every owner or occupier of any water mill or horse mill to keep, set up at the most public place at his mill at least three months in every year, a copy of the rates of toll allowed by law for grinding, designating the quantity for each species of grain. *ib. p.* 4. *ib.*

Millers ac-

Sec. 3. The owner or occupier of every mill afore said shall be accountable for the safe keeping of all grain received in said mill for the purpose of being ground therein, and shall when called for deliver the same or when ground and boulted (as the case may be) with the bags or casks in which the grain was delivered, to the owner, his or her servant or agent: *Provided*, That each bag or cask as aforesaid, be distinctly marked with the initial letters of the owners name: *Provided also*. That nothing herein contained shall be so construed as to charge the owner or occupier of any mill, to make him or them accountable for the loss of grain, bags or casks that shall happen by any accident without the fault or neglect of such owner occupier or miller: *ib. p. 4-5. ib.*

countable for safe keeping grain.

Proviso.

Proviso.

Sec. 5. If the owner or occupiers of any mill, their representatives, agents or millers shall take a greater proportionate quantity of toll than herein before authorised. Or shall not sufficiently grind, or grind and boult in due turn, all merchantable grain brought to their mill, agreeable to the direction of the owner, unless said mill is out of repair or unless prevented by draught or high water every such person so offending shall forfeit and pay to the party injured a sum not exceeding five dollars with costs of suit to be recovered before any justice of the peace in the township where the offence is committed, by an action founded on this statute: *Provided nevertheless*, That any owner of a mill may grind his or her own grain at any time. *ib. p. 5. ib.*

Taking illegal toll.

Or not grinding grain well, &c.

Penalty.

MINORS, ORPHANS, AND GUARDIANS.

Sec. 1. The judges of the circuit court shall have power to admit orphans or minors above the age of fourteen years when and as often as there may be occasion to make choice of guardians and tutors; and appoint guardians, next friends over such as are under the age of fourteen years. And at the instance and request of executors, administrators, guardians or tutors, to order and direct the binding out apprentices to trades, husbandry or other employment as shall be thought fit. And all guardians or next friends who shall be appointed by any circuit court in this territory shall be allowed and received, without further admittance, to prosecute and defend all actions and suits relating to the orphans or minors as the case may require

Choice and appointment of guardians next friends and tutors.

Minors may sue by next friends and guardians.

in any court of record in this territory. And if any person who is a minor who has a right to sue shall wish to sue, it shall be lawful for such person to sue by his next friend, where none has been appointed without any formality other than the next friend acknowledging the same in open court after the action is commenced, and the minor agreeing to the same in open court, if above the age of fourteen years, and if under that age for the court to allow such person to continue as next friend and guardian.* And next friends and guardians shall be responsible for the costs of suit. *Dec. sess.* 1814. *p.* 152. *pass'd* 21. *Jan.* 1815.

Guardian, &c. liable for costs

Orphans on minors neglecting or refusing to choose guardians court to appoint them.

Sec. 2. In all cases where it shall be represented, to the circuit court that any orphan minor or minors above the age of fourteen, shall not have a guardian, and shall neglect to choose one, the court shall issue a notification to such minor to appear at the next term of said court and choose a guardian, but if such minor shall refuse or neglect to appear, or appearing shall neglect or refuse to choose a guardian the court shall appoint one for such minor according to law, as if said minor were under the age of fourteen years. *ib. Dec. sess.* 1815. *p.* 44. *pass'd* 20. *Jan. in force* 1. *July,* 1816.

Orphans, &c. without estate to be bound apprentices.

Sec. 3. Every orphan or minor who has no estate sufficient for maintenance, may by order of the court be bound apprentice by his guardian until the age of twenty one, if a boy, or of eighteen if a girl, to some master or mistress who shall covenant to teach the apprentice some art trade or business to be particularized in the covenant; and also reading and writing; and if a boy, common arithmetic including the rule of three, which indenture shall be approved by the court and recorded.† *ib. Dec. sess.* 1814. *p.* 156. *pass'd* 21. *Jan.* 1815.

To whom guardianship shall not be committed or apprentices bound.

Sec. 4. None of the courts shall have power to order or commit the tuition or guardianship of any orphans or minors or to bind them apprentices to any person or persons whose religious persuasion shall be different from what the parents of such orphan or minor professed at the time of their decease; or against the minors own mind or inclination, so far as he she or they have discretion or capacity to express or signify the same or to persons that are not of good repute. So as others of the same religious persuasion may or can be found. *ib. p.* 155. *ib.*

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* *See also Judicial Proceedings, sec.* 9

† *See Title Apprentices.*

Guardians,&c. to give bond.

Sec. 5. The said circuit court shall require of guardians or tutors, appointed by them in pursuance of this act, bond and security in double the amount of the value of the minors estate for the faithful discharge of his office, and also may compel such guardian to give supplementary security if they have cause to suspect that a surety of a guardian is failing; and if he neglects so to do the court may displace him. *ib. ib. ib.*

Supplementary security

Guardian's bond to be taken in name of governor.

Sec. 6. The bond required to be taken by the circuit courts, by the sixty ninth section of the act to which this act is a supplement* shall be taken in the name of the governor of the territory and his successors in office, to and for the use of the minor or minors.† *L. M. T. Dec. sess.* 1815. *p.* 43. *pass'd* 20 *Jan. inforce* 1 *July*, 1816.

MISPRISON OF FELONY.

See Crimes and Misdemeanours, sec. 18.

MORTGAGES.

Mortgagee to enter satisfaction on record

Sec. 1. Every mortgagee of any real or personal estate in this district (territory) having received full satisfaction and payment of all sum and sums of money as are really due to him, by such mortgage, shall, at the request of the mortgagor enter satisfaction upon the margin of the record of such mortgage, recorded in the said [Recorder's] office, which shall forever after discharge. defeat and release the same, and shall likewise bar all actions brought or to be brought thereupon. *L. L. T. pt.* 1. *p.* 8. *pass'd* 1. *Oct.* 1804.

Penalty on refusal.

Sec. 2. If such mortgagee by hinself or his attorney shall not within three months after request and tender made for his reasonable charges, repair to the said office, and there make acknowledgment as aforesaid, he, she or they neglecting so to do, shall for every such offence forfeit and pay unto the party or parties any sum not exceeding the mortgage money, to be recovered in any court of record by bill plaint or information. *ib. p.* 8-9. *ib.*

Mortgagee

Sec. 3. Any person holding an instrument in writ-may petition for foreclose and sale of mortgaged premises.

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* *Ante sec.* 5.

† *For the powers, duties, liabilities, in managing minors estates, and final discharge of Guardians. See Administration, sec.* 47 *to* 53, *inclusive*

When served.

ing, purporting to be a mortgage on lands and tenements, shall be permitted to sue out a petition to the court of common pleas [circuit court] of the district [county] where the mortgaged property lies, stating in the same the instrument of writing containing the mortgage, and requiring the mortgagor, his heirs or representatives, to appear at the next succeeding court to shew cause why the mortgaged property should not be foreclosed, and the property therein mentioned be sold for the payment of the debt due the petitioner; which petition shall be served on the defendant or defendants at least twenty days before the court to which the petition is made returnable, and if the defendant appears and files his answer the cause shall proceed as in ordinary cases at common law. If the defendant fails to appear and answer or it shall be certified by the return to the petition that the defendant cannot be found within the proper district [county.] the court shall award an order of publication which shall notify the defendant that unless he appears on the first day of the succeeding term and proceed to trial that a decree will be entered against him; and the said publication shall be inserted for two months in any newspaper in the territory and in case there should be no newspaper printed in this territory, the same shall be posted up at the court house door for the same length of time. *ib. p.* 252--3. *pass'd* 20. *Oct.* 1807.

Deft. appearing cause to proceed.

Proceedings where def't. fails to appear and answer.

Sale not to take place until 9 months after petition filed.

Sec. 4. And it shall be the duty of said court, when entering a decree for the sale of such mortgaged premises to postpone the sale to a day at least nine months distant from the time of filing the petition, within which period the mortgagor may, on payment of the debt interest and costs, redeem his property. *ib. p.* 253. *ib.*

Mortgage of personal property how acted on.

Sec. 5. All contracts containing a mortgage of personal property heretofore entered into shall be proceeded on in like manner as is herein before directed, according to the true intent and meaning of such contracts. *ib. ib. ib.*

MULATTOES.

Who shall be deemed a mulatto.

Sec. 1. Every person other than a negro, whose grand father or grand mother any one is or shall have been a negro, although all his other progenitors. except that descending from the negro, shall have been white persons, shall be deemed a mulattoe and so every such person who shall have one fourth part, or more, of negro blood, shall in like manner be deemed a mulatto. *L. L. T. pt.* 1. *p.* 14. *pass'd* 1. *Oct.* 1804.

MURDER.

See Crimes and Misdemeanours, sec. 1.

NE EXEAT.

Who may grant writs

Sec. 1. The general [superior] court or any judge thereof in vacation* may order and direct that writs of *ne exeat* or injunction may issue agreeably to the rules prescribed in this act.† *L. L. T. pt.* 2 *p.* 10. *pass'd* 26. *Oct.* 1810. *in force* 1. *Jan.* 1811.

Bill or petition may be filed and sworn to.

Sec. 2. Writs of *ne exeat* shall not be granted but upon bill or petition filed and affidavit to the allegations,‡ which being produced to the general [superior] court in term time or to any judge thereof in vacation, the said court or judge may grant or refuse such writ, as to such court or judge shall seem just, and if granted the said court shall cause to be endorsed on the bill or petition, and the said judge in vacation shall endorse thereon, in what penalty bond and security be required of the defendant. *ib. p.* 11. *ib.*

Penalty of bond to be endorsed on.

Not to issue until comp't. give bond.

Sec. 3. No writ of ne exeat shall issue until the complainant shall give bond and security in the office of the clerk of the general [superior] court to be approved of by the general [superior] court in term time or by the judge thereof in vacation, to whom application is made, in such penalty as the said court or judge thereof shall order, to be endorsed on the bill or petition. And in case of any person stayed by such writ of ne exeat shall think himself aggrieved, he may bring suit on such bond, and if on the trial, it shall appear that such writ of ne exeat was prayed for without a just cause the person injured shall recover damages. *ib. p.* 11. *ib.*

Bond may be sued on.

Temporary absence of defendant no breach of his bond.

Sec. 4 If the defendant or defendants to the bill go out of the territory, but shall return before personal appearance shall be necessary to perform any order or

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The court is considered as always open for granting writs of ne exeat, see chancery proceedings sec. 17, art. 3.

† *Post sec.* 2 *to* 7 *inclusive, see. also post sec.* 8 *and following, whereby a ne exeat may issue on contract before day of payment.*

‡ *Compt. must swear to his bill see chancery proceedings sec.* 17, *art.* 4.

decree of the court such temporary departure shall not be a breach of the condition of the bond. *ib. p.* 11–12. *ib.*

Security may surrender principal.

Sec. 5. Whenever the defendant to the bill shall give security that he will not depart the territory, the security shall have leave at any time before the bond shall be forfeited to secure his principal in the same manner that bail may surrender their principal and obtain the same discharge. *ib. p.* 12. *ib.*

Condition of comp'ts. bond

Sec. 6. The bond required to be given by a complainant obtaining a writ of ne exeat, shall be conditioned that he will prosecute his bill with effect and that he will reimburse to the defendant such damages and costs as he shall sustain by occasion of the writ. *ib. ib. ib.*

Condition of def'ts. bond.

Sec. 7. The bond to be given by defendant against whom a ne exeat shall issue, shall be conditioned that he will not depart from the territory without leave of the court and that he will perform the order or decree of the court. *ib. p.* 13. *ib.*

To issue where the day of payment&c has not arriv'd

Plff's oath.

Sec. 8. In all cases where there shall be contracts for the payment of money or property or covenants to be performed and where the time for the payment or the time for the performance of such covenant or obligation has not arrived and the party who is apprehensive he may be injured, shall make oath that he has a just cause of a demand against the obligor or covenantor and that he has good reason to believe the obligor or covenantor is about to leave the territory, without an intention to return to reside and the obligation is yet undue, and that he has not got it in his power to bring suit against the obligor or covenantor, and at the time of making the contract the said obligee or covenantee did not know the fact of the obligor's or covenantor's intention to remove not to return before such obligation became due, and that the obligor or covenantor has refused to make satisfaction for the said contract, it shall be lawful for the court, or a judge thereof in vacation to grant a writ of *ne exeat*, to stay such person till the time has expired before which such contract was to be complied with. *L. M. T. Dec. sess.* 1815, *p.* 65–66, *pass'd* 22 *Jan.* 1916.

Bill to be filed

Bill to be supported by aff't or other proof.

Sec. 9. Before the aforesaid *ne exeat* shall be granted the person applying for the same shall file his bill in the office of said court for a *ne exeat*, stating the circumstances of his case and before a *ne exeat* is granted the complainant shall produce satisfactory proof to the judge or court granting the same by affidavit or otherwise, that there is good ground to apprehend the defendant is about to remove out of the territory and not to return as stated in said bill, and if the said court or judge shall be satisfied that injustice would be done with such writ the same shall be granted and the defendant shall be bound to give security in such sum as may be directed by the court or judge granting such writ of ne exeat, that he will render himself to the suit of the complainant when the said obligation shall become due or the time arrive for its performance and that he will render himself in satisfaction of such contract judgment or decree of said court. *ib. p.* 66. *ib.*

Def's. bond.

When bill to be returned.

Sec. 10. The bill herein before provided for obtaining a ne exeat, shall be returned to the first term of the court, and the defendant may move to dissolve the writ of *ne exeat* for not being obtained in pursuance of the spirit and meaning of this act.* And the court shall have power to empannel a jury to try any issue of fact or facts that may arise and particularly whether the matter of the bill be true or false, and the parties shall plead thereto and join issue at the first term of the return and said cause to be disposed of as other causes are, and if the matter of the bill be found true, the complainant shall have his costs. And if the money be due, or the time has come at which the contract is to be performed the court shall be authorised to try the merits thereof as other cases of law jurisdiction are tried and pronounce judgment thereon but if the subject matter of the bill be solely the object of chancery jurisdiction then the court shall proceed to the final determination thereof as in other chancery cases, but if the debt is not due, or the time come for the performance of the contract, at the return of the writ of *ne exeat* the court shall only proceed so far in said cause as may be necessary to determine whether the said proceedings are according to the intent and meaning of this act, all further proceedings shall stand continued till the time shall come when the contract is to be performed after which time, the court shall proceed and dispose of the case, as other cases are disposed of, but the defendant may at any time, after the time has come when the contract was to have been performed, show that the contract has been performed according to the effect thereof, which if found for the defendant he shall have judgment as in other cases: *Provided however,* That if

Facts how tried.

If money be due, &c. court to proceed.

How to proceed if bill be solely the object of chancery jurisdiction

If money be not due how to proceed.

Def't. may shew performance.

Def't. filing

**Ante sec.* 8 *and*

his answer on oath, and shewing facts stated in bill untrue.

To be discharged.

the defendant will file his answer with such judge in vacation or in the office of the court in term time denying on oath his intention of removing from the territory not to return and shall otherwise satisfy the said judge or court of his intention and ability to satisfy and pay the debt when due, or comply with the contract at the time specified for its performance, that then the said judge or court may dismiss the said writ of ne exeat and the party shall be discharged without any security; *ib. p.* 68. *ib.*

NEGROES AND MULATTOES.

Assaulting white person.

Sec. 1. If any negro or mulatto,* bound or free shall at any time lift his or her hand in opposition to any person not being a negro or mulatto, he or she so offending shall for every such offence proved by the oath of the party before any justice of the peace of the district [county] where such offence shall be committed, receive such punishment as the justice shall think proper, not exceeding thirty lashes, on his or her bare back well laid on, except in those cases where it shall appear to such justice that such negro or mulatto was wantonly assaulted and lifted his or her hand in his or her defence. *L. L. T. pt.* 1. *p.* 18. *pass'd* 1*st Oct.* 1804.

NEW MADRID COUNTY.

See. Counties; sec. 5.

NOTARIES PUBLIC.

By whom appointed.

Where to reside.

Tenure of office.

Sec. 1. The governor shall appoint and commission one person, in each district [county,]† of this territory, of known good character and abilities as notaries public, for the territory of Louisiana [Missouri,] who shall reside at the place where the court of common pleas (circuit court) are held respectively. And the said notaries whilst residing in such place or places shall hold their commissions during the term of five years, but may be removed from office upon a conviction had in the general [superior] court for a misdemeanor in office. *L. L. T. pt.* 1. *p.* 62. *pass'd* 25*th June* 1807.

May administer oaths.

Sec. 2. The said notaries so commissioned and every of them shall have the power of administering oaths and affirmations according to law, in all matters belonging or incident to the exercise of their notorial office. And all and every person or persons that shall be legally convicted of having willfully and knowingly made or taken a false oath or affirmation before any notary or notaries in any matter or matters within his or their official duty shall suffer the pains and penalties of wilful and corrupt perjury. *ib. p.* 62. *ib.*

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* *Who are deemed mulattoes. See Mulattoes.*

† *One or more in each county. See post sec.* 8.

False swearing before deemed perjury.

Sec. 3. The said notaries and every of them shall have power to receive the proof or acknowledgment of all instruments of writing relating to commerce or navigation, and to receive and authenticate acknowledgments of powers of attorney, and also to make declarations and testify the truth thereof under their seals of office concerning all matters by them done in virtue of their respective officers. *ib. p.* 62–63. *ib.*

Powers and duties.

Sec. 4. Each of the said notaries shall keep fair registers of all official acts by him done in virtue of his office, and shall when thereunto required give a certified copy of any record in his office unto any person or persons applying for the same, such person paying the legal fees therefor. *ib. p.* 63. *ib.*

To keep registers of official acts.

Sec. 5. In case of the death resignation or disqualification or removal of any of the said notaries public, his or their register and other public papers shall be lodged, within thirty days next after such death resignation disqualification or removal, in the offices of the recorder of deeds of the particular district [county] where he resided, who may bring or maintain actions of trover or detinue for the same, and such registers or public papers shall not in any case be liable to be seized attached or taken in execution for debt or for any demand whatsoever. *ib. ib. ib.*

To deliver to recorder his registers in case of removal, &c.

Or be sued.

Sec. 6. Every such notary shall provide a public notorial seal with which he shall authenticate all his acts, instruments and attestations, which seal shall have for legend, the name surname and office of the notary using the same and the place of his residence. *ib. p.* 63. *ib*

To keep a seal of office

Sec. 7. Every notary on his appointment and before he enters upon the duties of his office, shall take and subscribe an oath or affirmation before any person duly authorised by the govenor to administer oaths of office, that he shall and will well and faithfully perform the duties of his office, and also shall give bond himself in the sum of five hundred dollars and two se-

To take oath.

Give bond.
Condition.
To be recorded.
Where filed.
Copy to be evidence.

curities in the sum of two hundred and fifty dollars each; conditioned for the faithful performance of the duties of his office, which bond together with his commission shall be recorded in the office of the recorder of deeds of the district [county] for which such notary is appointed. The bond shall be filed with the secretary of the territory, and may be sued by any party or parties injured and copies of such bond under the hand and seal of said secretary of the territory, or under the hand and seal of the recorder of deeds in whose office the originals are recorded shall be admitted as legal evidence in any suit or suits that shall be brought thereon against the obligors their heirs, executors or administrators: *Provided always*, That no person shall recover any damage against such notary or his securities, their heirs, executors or administrators unless such suit be instituted within three years after the cause of action may have accrued.† *ib. p.* 63-64. *ib.*

Limitation of suits.

Additional in each county.

Sec. 8. From and after the passage of this act (30 Jany.1817.) it shall and may be lawful for the governor of this teritory, in addition to the number of notaries provided for by the act to which this is a supplement* to appoint one or more notaries in each county, which said notaries thus appointed, shall be qualified in the same manner perform the same duties, receive the same emoluments and be subject to the same regulations and restrictions, as is provided for by the said act.† *L. M. T. Dec. sess.* 1816 *p.* 84. *pass'd* 30*th Jany.* 1817.

Additional duties.

Sec. 9. The provisions of an act passed by the governor and judge of the territory of Louisiana, entitled an act concerning registered boatmen in this territory‡ be and the same is hereby extended to notaries public. *ib. ib. ib.*

OATH OF OFFICE.

Persons appointed to office to take oath.
Form.

Sec. 1. Every person appointed to any civil office in the district, and commissioned by the governor, shall previous to his entering upon the exercise of his office, take the following oath, viz: I, A. B. being appointed to the office of , do solemnly swear, that I will, well and truly execute the duties of my said of-

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**Ante sec.* 1.

†Ante sec. 1. *to* 7 *inclusive.*

‡See Boatmen (Registered) sec. 5 *and following, and Register of Boatmen.*

fice, according to the best of my skill and understanding, without fraud or partiality---So help me God. *L. L. T. pt.* 1. *p.* 29. *pass'd* 1 *Oct.* 1804.

Affirmation admitted in certain cases.

Sec. 2. any person appointed as aforesaid, consciencioușly scrupulous of taking an oath, shall make the following affirmation, previously to entering upon the duties of his office, viz: I. A. B. being appointed to the office of do solemnly, sincerely and truly, declare and affirm, that I will, well and truly execute the duties of my said office, according to the best of my skill and understanding without fraud or partiality, and this I declare and affirm under the pains and penalties of perjury. *ib. p.* 30. *ib.*

Form.

By whom to be administered.

Sec. 3. All oaths of office or declarations and affirmations prescribed as aforesaid, shall be taken before the governor or such person or persons as shall by him be appointed and commissioned for that purpose, and certified upon the commission of the person taking the same. And in case of the absence of the governor, the said oath or declaration or affirmation, may be taken before and certified by either of the judges of the district. *ib. ib. ib.*

OBSTRUCTING PROCESS.

See Crimes and misdemeanours sec. 21.

OFFICERS.

Commission of, to be recorded.

Sec. 1. Every person holding a civil office by commission from the governor of this territory, shall within three months after the passage of this act, cause such commission to be recorded in the office of the recorder of the district [county,] in which said office is appointed, and every person who shall hereafter be appointed to any civil office by a commission from the governor, shall before he enters upon the execution of such office cause his commission to be recorded with the proper recorder as aforesaid. *L. L. T. pt.* 1. *p.* 246. *pass'd 7th July,* 1807.

Resigning or removing, &c. to deliver up records and papers belonging to his office

Sec. 2. In all cases where, in consequence of a change in the judicial system, the death resignation or removal from office of any officer having possession of the papers appertaining and belonging to a court or the clerk thereof, or public papers and records of any discription appertaining to any public office either civil or military within this territory, in such cases it shall of

Penalty on failure.

How recovered and appropriated.

the person whose office is vacated, or who has been removed from office, or their legal representatives to deliver to the successor in office on demand all records, books and papers and appurtenances in any wise belonging to said office, under the penalty of forfeiting any sum not exceeding one thousand dollars, nor less than one hundred dollars on failure to deliver the same on demand which fine shall be recovered in any court of record within this territory for the use of the said territory. *ib. p.* 57–58, 23d *June*, 1807.

If refused after demand made thereof by successor.

Judge may issue his warrant to seize them on affidavit being filed.

Sec. 3. In case a demand shall be made by the legal existing officer who has succeeded to the one whose office has been vacated, or who has been removed, of the person who has the possession of the papers thus appertaining to the said office in the presence of two or more witnesses, if the person having possession of the records, books and papers shall refuse or neglect to deliver the same on demand, it shall and may be lawful for any judge of the general [superior] court, or justice of the court of common pleas [circuit court] of the proper district [county] on the application and affidavit of the applicant on oath or affirmation, to issue his warrant directed to the sheriff or coroner of said district [county] to seize and secure all the books. papers and records belonging to the said office, and deliver the same to the person who shall produce the latest commission from the govenor of the territory. *ib. p.* 58–59 *ib.*

Persons aggrieved may have a writ of mandamus.

Sec. 4. In order that summary and complete justice may be done. it shall and may be lawful for any person or persons who may conceive him or themselves aggrieved to apply to a judge of the general [superior] court, whose duty it shall be award a writ of *mandamus* directed to all parties concerned to appear at the next term of the general [superior] court in order that right and justice may effectually be done. *ib. p.* 59. *ib.*

Officer executing warrant may break open doors, &c

Call others to his aid.

Sec. 5. It shall be lawful for the officer executing the warrant as aforesaid to break open any doors trunks or places, in which the records, books or papers aforesaid may be concealed and in case of resistance to arrest the person or persons who may resist his authority, and carry him or them before a judge or justice to be dealt with as disturbers of the peace; and the officer is hereby authorised to impress a sufficient number of persons to enable him to carry his warrant into effect in case he should deem it necessary. And any sheriff or coroner neglecting or refusing to perform the duties required of him by this act,* shall, upon conviction had in the proper court, be liable to a fine not exceeding one thousand dollars, nor less than one hundred dollars, to be applied to the use of the district [county] where such conviction is had. *ib. p.* 59. *ib.*

Shff. or coroner failing to do his duty. Fined

How appropriated.

Sec. 6. The general [superior] court shall have power to proceed by *information* against any public officer of this territory for oppression or misdemeanour in office. And indictments found by the grand jury of any district [county] against a public officer for oppression or misdemeanour in office may be removed into the general court at the instance of the attorney general or of the defendant. *ib. p.* 98. *pass'd 3d July, in force 1st Sept.* 1807.

Proceedings against officers for oppression or misdemeanor.

OFFSETT.

See Defalcation, sec. 1.

ORPHANS.

See Minors Orphans and Guardians.

OUTLAWRY.

Sec. 1. If any person shall be legally indicted in any court of criminal jurisdiction within this territory of murder, arson, rape, robbery or burglary, or as accessary before the fact to any of the same offences, and shall not appear to answer such indictment, or having apeared shall escape before trial, and the same proceedings shall be removed by writ or *certiorari* to the supreme or general court of this territory it shall and may be lawful for the same court to award a writ or writs of *capias*, directed to the sheriff of the district [county] where the fact shall be charged to have been committed. And if the party indicted, is supposed to be in any other district [county,] then also the sheriff of such district [county,] which writ shall be delivered to the sheriff or sheriffs at least two months before the return day thereof, commanding the said sheriff or sheriffs to have the person indicted as aforesaid, if found within their bailiwick, and him safely keep, so that he may have his or her body before the judges of the said general [superior] court at the next term of the

Writs of capias to issued ag't persons indicted for certain crimes

To whom to be directed.

When to be delivered

Command of capias.

Ante sec. 2 to 4 inclusive.

general [superior] court, to answer to the said indictment, or prosecute his or her traverse thereupon, as the case may be, and be further dealt with as the law shall direct. And if such sheriff or sheriffs shall return that the person in the said writ named cannot be found in his bailiwick, then the said court shall award a second writ of *capias*, which shall be delivered at least three months before the return day thereof, to the sheriff of the district [county] where the fact shall be charged to have been committed. And if the party indicted shall be supposed to be in any other district [county,] then another writ of *capias* shall also be issued and delivered at least three months before the return thereof, to the sheriff of such district [county] by which said writ the said sheriff or sheriffs shall be commanded as in the first writ. And further, if the person indicted cannot be found in his or their bailiwick, then to cause public proclamation to be made on three several days, in one of the court of quarter sessions of the peace [circuit court] to be held for the said districts [counties] respectively, between the teste and the return days of the same writs, that the party so indicted shall appear before the judges of the general [superior] court, at return of the said writ, to answer such indictment or to prosecute his or her traverse thereof, or through default thereof, he or she will at the return of the same writ or writs, *be outlawed*, and stand convicted of the crime whereof, he or she was indicted as aforesaid. And the said second writ of *capias* directed to the sheriff of the district [county,] where the crime hath, or shall be charged to have been, committed, shall contain a further clause, commanding the same sheriff in case the person indicted cannot be found in his bailiwick, to cause a copy of the said second writ of *capias* to be published in some newspaper printed in this territory, and if there be no newspaper printed in this territory, then in some adjoining state or territory once a week in four successive weeks. And if upon the return of the same writ or writs last mentioned, by the said sheriff or sheriffs, that the directions of the said writ or writs has been fully complied with and pursued, the person indicted as aforesaid shall not yield himself or herself to one of the said sheriffs, so that he may have his or her body before the judges of the said general [superior] court, at the day and place as directed by the said writ, or

If non est be returned an alias to issue.

To whom and when to be delivered

Proclamation to be made.

Alias to be published.

Deft. not appearing on return of *alias*.

having surrendered him or herself, shall escape from his custody, or having been bailed on his or her surrender or *caption*, shall not appear, so that through want of his or her appearance at the time and place the said general [superior] court shall appoint, for his or her trial, no trial of his or her offence can be had, the general [superior] court shall in either of those cases, pronounce and declare the said person indicted as aforesaid, and not appearing at the time and place appointed for his or her trial as aforesaid, to be *outlawed* and convicted of the crime whereof he or she shall have been indicted as aforesaid; and at the same time the said general [superior] court shall declare the legal punishment for the same crime. And whensoever imprisonment shall be part of the sentence for any of the said offences, the term thereof shall commence from the time the person *outlawed* shall subsequent to his or her *outlawry*, actually be in the custody of the sheriff of the district [county] where the offence is stated to have been committed, which sentence shall be fully and particularly entered upon the records of the said general [superior] court. And the said sentence of *outlawry* shall have the legal effect of a judgment upon verdict or confession against the person so *outlawed*, for the offence whereupon he or she shall have been outlawed, unless and until the same outlawry shall be afterwards avoided by the judgment of the same court in the nature of a writ of *error*. *L. T. pt.* 1. *p.* 296-7-8-9. *pass'd 2d Nov.* 1808.

To be outlawed convicted and sentenced.

Sentence of imprisonment when to commence.

Sentence to be entered on record.

Effect thereof.

Sec. 2. When any person *outlawed* as aforesaid, shall be taken either by a *capias utlagatum*, or otherwise, or being in the sheriffs custody, shall be brought to the bar of the general [superior] court, the court shall upon the suggestion and motion of the attorney general award execution to be done upon him or her, unless the prisoner shall plead either *ore tenus* or in writing as his or her counsel shall advise, that he or she was not the person who was *outlawed*, or shall assign error in fact, or in law sufficient to prevent the award of execution, in which case the court shall proceed to determine the same either by an inquest, or by their own judgment agreeable to law. And the prisoner shall by such plea, have all the advantage and benefit of all legal motions in his or her favor, as if he or she had brought a writ of error, and had assigned the several matters pleaded as errors. *ib. p.* 299. *ib.*

Person outlawed appearing.

Execution to be awarded unless he plead.

Proceedings thereon.

Outlaw appearing within one year.

Sec. 3. If any person outlawed, shall within the space of one year next after the *outlawry* pronounced against him or her, yield himself or herself to one of the judges of the general [superior] court, and offer to traverse the indictment whereon the said *outlawry* shall be pronounced as aforesaid, then he or she shall be received to the same traverse, and being thereof found not guilty by the verdict of a jury, he or she shall be clearly acquitted and discharged of the said *outlawry* as fully as if no such outlawry had been had. *ib. p.* 299. 300. *ib.*

And traverse to have trial, &c.

Costs by whom to be paid.

Sec. 4. All costs and charges of the proceedings to outlawry shall be borne and paid by the district [county] where the crime is said to have been committed: *Provided*, That if the person or persons so outlawed shall have real or personal estate, the same or so much thereof as shall be necessary, shall be sold upon a writ of execution, from the general [superior] court, and the proceeds of such sales shall be applied to the payment of such costs and charges, or so far as the same shall extend, in exoneration of the district [county.] And in case the party against whom judgment of outlawry is entered shall have a wife and children or wife or children, within this territory, that in such case there shall be a forfeiture of one half of his estate, real and personal to the territory. And if the party convicted shall have no wife or children, as aforesaid, then there shall be a forfeiture of all his estate as aforesaid. *ib. p.* 300. *ib.*

Forfeiture of estate.

PARTITION.

Of lands how obtained.

Sec. 1. Where any one or more persons proprietors of any tract or tracts, lot or lots of land within this territory, are desirous of having the same divided, it shall and may be lawful for the court of common pleas [circuit court] of the district [county] where such lands or lots may lie, on the petition of either party, notice of such application having been previously given, for at least four weeks by the parties so applying to the parties interested, in case they reside within the territory, or if they do not reside within the territory, such notice shall be given in some one of the public newspapers printed in this territory, if one is published therein. if not, in some one of the public newspapers printed in some adjoining state or territory, to appoint not less

Application to be made to C. C

Notice to be given.

Commission-than three nor more than five respectable house-holders residents of said district [county] not related to either of the parties, as commissoners for dividing the said tract or tracts, lot or lots of land. The commissioners so appointed shall previously to their entering on their duty, take an oath or offirmation, honestly and impartially to execute the trust reposed in them as commissioners aforesaid. *L. L. T. pt.* 1. *p.* 292–3. *pass'd 2d Nov.* 1808.

Commissioners to take oath.

Sec. 2. The said commissioners shall proceed to the premises and make division of the land, lots tenements and hereditaments as directed by the court among the owners and proprietors thereof according to their respective rights, which said partition being made by the said commissioners or a majority of them, and return thereof being made in writing under their hands to the said court particularly describing the lots or portions allowed to each respective owner or proprietor, mentioning which owener or owners, proprietor or proprietors are minors, if any there shall be, which return being acknowledged by the commissioners or a majority of them in open court, or before one of the judges of the court, and approved of by the court, shall be entered and recorded by the clerk, and shall be a partition of such lands, lots and tenements therein mentioned: *Provided,* That where any one or more persons may hold any tracts or lots of land through which a district [county] line may run, it shall be lawful that application may be made under this act to the court of either of the districts [counties] in which the land may lie.—And the report and proceedings of the commissioners shall be recorded in the respective courts of the districts [counties] in which the land may lie. *ib. p*-293. *ib.*

Commissioners duties, to divide land.

Make return.

And acknowledge return.

Where lands lie in different counties, and divided by county line.

Sec. 3. Where any houses and lots or lands are so circumstanced that a division cannot be had without great prejudice to the proprietors, and the commissioners appointed to divide the same, shall so report to the court; the court shall thereupon order the said commissioners to sell such house and lots, or lands, at public vendue. And the said commissioners or a majority of them, having after public notice given, sold the same to the highest bidder, shall make and execute conveyances to the purchaser or purchasers thereof which shall operate as an effectual bar against such owners or proprietors and all persons claiming un-

Where no div. can be made without inj'y. com to report.

Sale to be ordered.

Conveyance to be given.

Money how appropriated.

der them; and the monies arising therefrom, shall be paid by the said commissioners to the owners or proprietors, their guardians or legal representatives as shall be directed by the court, saving and reserving all the legal rights of others. *ib. p.* 293–4. *ib.*

Com's. compensation.

Sec. 4. The said commissioners so appointed shall be entitled to receive from the person making the application the sum of one dollar and fifty cents for every day they shall be employed in effecting such division. *L. L. T. pt.* 1. *p.* 294.

Guardians to act for their wards under this act.

Sec. 5. The guardians of all minors shall be and are hereby authorised, on behalf of any minor whose guardian they are, to do and perform any matter or thing respecting the division of any lands, tenements, or hereditaments, as is herein directed, which shall be binding on such minor and be deemed as valid to every purpose, as if the same had been done by such minor after he had arrived at full age. *ib. ib. ib.*

Not to be made contrary to intention of a testator.

Sec. 6. No division or sale shall be made by order of any court as herein directed, contrary to the intention of any testator as expressed in his last will and testament. *ib. p.* 295. *ib.*

Party aggrieved may appeal to S. C.

Sec. 7. Any party finding himself aggrieved by any order of the court of common pleas [circuit court] may appeal therefrom to the general [superior] court. The general [superior] court after affirming or reversing the order of the court of common pleas [circuit court] shall endorse their decree on the record of the court below, and remand the same to such court of common pleas [circuit court] to be carried into execution:

Proviso.

Provided, That every appeal, to the general [superior] court shall be made and entered at the same term in which the order was made by the court of common pleas [circuit court.] *ib. ib. ib.*

Intestates estate may be sold where division cannot be had.

Sec. 8. When lands, tenements, and slaves shall desend from any person dying intestate, and an equal division thereof cannot be had in kind, on account of the nature of the property, it shall be lawful for the superior court of the proper county, or the circuit court of the county from which administration is granted. on the application of any one interested to direct the sale of such lands tenements and slaves, and cause the money arising therefrom to be distributed according to the rights of each claimant:

Proceeds how disposed of.

Parties to be summoned.

Provided always, that each claimant shall be duly summoned to shew cause if any he can against such sale. *L. M. T. Dec. sess.* 1814. *p.* 161. *pass'd* 21 *Jan'y.* 1815.

If any person interested be a non resident

Notice shall be published

Sec. 9. Where application shall be made to the superior or circuit court according to the eightieth section of the act to which this is a supplement,* by any person or persons interested for the sale of lands, tenements or slaves, the court shall, if satisfied that any of the heirs do not reside within this territory, or so situated that personal notice cannot be conveniently served upon such absent heir the court in such case shall order that such non resident heirs shall appear at the next term of said court and shew why such sale shall not be made according to such application, a copy of which said order shall be inserted for six weeks successively in some public news paper printed in this territory, and said notice shall be considered and taken as equivalent to a summons and the court shall decree accordingly. *ib.* 1815. *p.* 47--8. *pass'd* 20 *Jan.* 1816.

PERJURY.

See Crimes and Misdemeanours sec. 19.

PERPETUATING TESTIMONY.

On petition a judge of the S. or C. C. shall award a dedimus.

To whom directed.

Sec. 1. On the petition of any person or persons to one of the judges of the circuit courts or superior court of this territory praying for a dedimus to take the deposition or depositions of any person or persons named therein within this territory, the petition setting forth that the testimony is to perpetuate the remembrance of any fact, matter or thing which may relate to the boundaries of lands, improvements of lands, name or former name of water courses, the name or former names of any portion or district of country, or regarding the ancient customs, laws or usages of the inhabitants of this country as far as the same may relate to the future settlement of land claims or touching pedigree, titles to slaves on any other matter or thing necessary to the security of any estate real or personal, or any other personal right; particularly specifying the fact or facts intended to be proved, and supported by the affidavit or affirmation of the applicant that the fact or facts stated in his petition he believes to be true. The said judge shall award a dedimus directed to any two justices of the peace, or to any of the clerks of the superior or cir-

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**Ante sec.* 8.

cuit courts in the county where such testimony is to be taken, for the purpose of taking such deposition or depositions prayed for in the petition : *Provided however,* that it shall be the duty of the person or persons praying for a dedimus for the purposes before mentioned, before proceeding to take the deposition or depositions to give one month's previous notice, with a copy of the petition annexed to each and every person that may be known to be interested in the matter to be the subject of the deposition or depositions, or to his, her their attorney ; or in case the person be a married woman, the notice to be served on her husband, or if a minor to be served on his or her guardian. or if he or she should have no guardian or the guardian should be interested then a guardian to be chosen by the court for that purpose, and the said notice shall contain information of the time and place where the said testimony is to be taken, or in lieu of written notice, he, she, or they shall cause the notice in form as aforementioned, with a copy of the petition addressed to whom it may concern to be published once a week for one month, which shall be at least two months previous to the day of taking such depositions: in at least one of the public newspapers printed in this territory. *L. M, T. Dec. sess.* 1814. *p.* 73. *pass'd* 18 *Jan'y.* 1815.

Proviso.

Petitioner to give a months notice, &c.

Sec. 2. Said justices of the peace or clerks of the superior or circuit courts as aforesaid shall attend at the time and place appointed where each and every person who may think himself, or themselves interested in the depositions about to be taken, may attend by themselves or by their attornies, and may examine and cross examine such deponent or deponents ; and all the questions and answers shall be reduced to writing and included in such deposition. And the deposition being reduced to writing in the English language or the language of the deponent if the deponent does not understand the English language: and moreover as near as possible in the very words of the witness and distinctly read over to said witness, and subscribed by such witness, the said justice of the peace, or clerk as aforesaid shall administer an oath or affirmation as to the truth of the deposition so taken ; and shall certify the same deposition sealed and directed, shall within thirty days be forwarded by the said justices of the peace, or clerk as aforesaid to the clerk of the county [circuit] court where the land or property is situated, or supposed to be situa-

Manner of taking depositions.

To be recorded.

ted that may be effected by the deposition. And the said clerk shall in his ex officio duty as recorder, record the same; and shall certify on the back of the deposition that the same has been duly recorded, and return it to the person or persons who first prayed for the same. The justices of the peace, and the clerk of the court shall receive such fees as are allowed to them for similar services. *ib. p. 74. ib.*

Fees.

Depositions to be read in evidence in case of the death or disability of the deponent.

Sec. 8. Deposition or depositions taken in manner and form, and certified as in this act before mentioned, or duly certified copy of the record of any such deposition, may, in case of the death of such deponent, or in case of inability to give testimony, in consequence of his, her, or their insanity or imbecility of mind, or rendered incompetent by judgment of law, or in case of his, her or their removal, so that their testimony cannot be obtained in the ordinary way on trial, be used as evidence in any cause to which it may relate: *Provided*, That nothing in this act contained shall be so construed as to prevent any and all legal exceptions being made and allowed to the reading of such deposition or depositions, on any trial or trials at law or in equity, in which the same may be introduced as evidence *ib. p. 75. ib.*

Proviso.

POOR.

To be supported by counties

Who considered to be

Sec. 1. Each and every county in this territory shall relieve, support and maintain its own poor, such as the lame, blind, sick and other persons who from age and infirmity are unable to support himself or herself, and who have no sufficient estate of their own, and who has resided nine months next preceding the time of any order being made respecting such persons, in the county, and who has not moved from any other county for the purpose of imposing the charge of keeping such poor person in the county where he or she may have last lived for the time aforesaid. *L. M. T. Dec. sess.* 1814. *p.* 36-37. *pass'd 2 Jan. in force 1 Feb.* 1815.

Residence.

Information of, how to be abtained.

Sec. 2. The courts of common pleas [circuit courts] of the respective counties, on the information of any justice of the peace of the county where any poor person may have resided for the space of time in the first section of this act mentioned, or on the knowledge of the judges of said court or any of them, that such person is lame, blind or sick and thereby unable to sup-

How court to proceed.

port himself or herself, or from age and infirmity unable to support him or herself, and has no sufficient estate for that purpose. And on such court being satisfied of the truth of such information, it shall be their duty from time to time and as often and for as long a time as it may be necessary to provide at the expence of the county for the support and maintainance of such poor person, and to order from time to time the defraying of such expence by drawing orders on the treasury of such county. *ib. p.* 37, *ib.*

POSSE COMITATUS.

May be called in the service of process.

Sec. 1. In all cases where by the common law or the statute of this territory any ministerial or other officer is authorised or directed to execute any process he shall be authorised if necessary to call to his aid all free white, male inhabitants of the county in which such officer is authorised to act, above the age of twenty one years who live most conveniently to the place where such act is to be done or process executed. *L. M. T. Dec. sess.* 1813, *p.* 59–60, *pass'd* 12 *Jan.* 1814.

Who may be summoned.

By constable.

Sec. 2. Every constable within this territory is hereby authorised to call to his assistance in the execution of any process, he is authorised by law to execute, any free white male above the age of twenty one years in the county where he is authorised to act. *ib. p.* 60. *ib.*

Persons summoned neglecting or refusing to attend to be fined.

Sec. 3. If any such person or persons shall refuse or neglect to obey the summons of any such officer, such person or persons neglecting or refusing shall on conviction by indictment be fined in any sum, at the discretion of the court trying the same, not exceeding fifty dollars nor less than five dollars. *ib. ib. ib.*

POTOSI ACADEMY.

Preamble.

Sec. 1. Whereas several inhabitants of the county of Washington, have by subscription among themselves, built and in part finished two houses at Mine a Burton in said county, for the purpose of erecting and establishing an academy therein, for the education of youth, by the name of the Potosi Academy; which academy is now in operation and trustees named by the subscribers thereto, to superintend the same: And whereas, by a law passed at this session of the legislature, the sum of four thousand dollars is authorised to be raised by lottery for the benefit of the said academy and paid to the trustees thereof,

Sec. 1. *Be it therefore enacted by the General Assembly of the territory of Missouri,* That on the first saturday in the month of September annually, an election shall be held at the said academy, for seven trustees of the said academy for the ensuing year, which election shall be by ballot. no person shall be entitled to a vote at the said election, except a free white male inhabitant of the age of twenty one years or upwards, who have subscribed and paid at least the sum of five dollars towards said academy, and have resided within said county one year, preceding such election; the election shall be kept open from twelve o'clock in the forenoon until four o'clock in the afternoon, each ticket shall contain the name of seven persons for trustees, who have resided in the said county one year previous to the election, and who have also subscribed and paid the sum of ten dollars at least to the said academy previously thereto. After the election is closed the tickets shall be examined and counted and the seven persons having the highest number of votes shall be trustees for the said academy for one year thereafter, and in case no election shall be held on the day herein appointed for the purpose, until succeeding trustees shall be appointed according to the foregoing provisions of this act; the first election shall be on the first saturday of September next and until such election shall take place, William H. Ashly, Lionel Brown, John R. Jones. Moses Austin, David Wheeler. Moses Bates, Benjamin Elliott, James Austin, William Perry, John M'Ilvain, Andrew Scott, John Hawkins and Abraham Brinker are hereby named and appointed trustees thereof, and they and their successors in office shall be and they are hereby constituted a body politic and corporate, to be known by the name of the trustees of the Potosi academy and by that name shall have perpetual succession in office, and a common seal. *L. M. T. Dec. sess.* 1816, *p.* 62 *pass'd* 30 *Jany.* 1817.

Election of trustees by ballot.

Qualifications of voters.

Trustees previously to an election.

Body politic and corporate.

Sec. 2. There shall be a monthly meeting of the trustees of said academy on the first Saturday of every month, and the president or any of said board, shall have power to call special meeting. giving at least two days previous notice thereof in writing in one or more of the most public places in the town of Potosi, any five of said trustees at any stated, adjourned or special

Monthly meeting.

Special meeting

Powers.

meeting shall form a board or quorum, and a majority of them shall be capable of acting and doing all the business and concerns of the academy and particularly of entering into contracts for erecting or repairing any building or buildings necessary for the said institution, of making and enacting any bye laws and ordinances for the government of said academy, not contrary to the constitution or laws of the United States or the laws of this territory, of filling vacancies in the board of trustees occasioned by the death, resignation or removal out of the territory until the next annual election, of electing and appointing the principal professors and teachers of the said academy, of agreeing with them for their salaries and stipends, and removing them for misconduct or breach of the laws of the institution, of appointing a committee of their own body to carry into execution all and every the resolutions of the board, of appointing a president, treasurer and secretary and stewards, managers and other necessary and customary officers for taking care of the estate and managing the institution and to pay them for their services. *Provided*, that all vacancies in the board of trustees shall be filled at a standing meeting of the board. *ib. p.* 64. *ib.*

Vacancies how supplied.

Further powers of the trustees.

Sec. 3. The said trustees shall have power to demand, sue for and receive and recover the money materials and labour already or that may hereafter be subscribed for the use of said academy, now called the Potosi academy but heretofore called the Mine a Burton academy, and expend the same for the purposes of said academy, in such manner as they shall deem proper. *ib. p.* 65. *ib.*

Classes of the academy.

Sec. 4. The said academy shall be divided into branches with the necessary teachers and masters in each to be denominated the senior and junior branches; in the senior branch the said trustees shall at all times cause the English language to be taught in the said academy, together with such other languages and sciences as are usually taught in seminaries of learning, so far as the funds of the institution and circumstances will admit; in the junior branch the said trustess shall at all times cause the first principles of literature, with reading, writing and arithmetic, as far as the rule of "*three*" at least to be taught in the said academy. *ib. ib. ib.*

Sec. 5. No preference shall be given or any discrimination be made in the choice of trustees. professors, teachers, or students on account of religious sentiments, nor shall the trustees, professors or teachers, at any time, make bye laws, ordinances or regulations, that may in any wise interfere with or in any manner control the rights of conscience or the free exercise of religious worship. *ib. p.* 66. *ib.*

No distinctions to be made on account of religious opinions.

Sec. 6. The said trustees and their successors shall by the name and stile aforesaid be capable in law to purchase, receive and hold to them and their successors any lands, tenements, goods and chattels, of what kind so ever they may be. which shall be given or devised to or purchased by them for the use of said academy, and shall sell and dispose of the same in such manner as shall seem most conducive to the interest of said academy. *ib. ib. ib.*

The trustees may acquire property.

PRISON BOUNDS.

Sec. 1. At the first term of the court of the general quarter sessions of the peace [circuit court] which shall be held after the passing of this act in the several districts [counties] the said courts respectively shall fix and establish prison bounds, immediately contiguous to the public gaols of their districts [counties] which shall not exceed the distance of fifteen rods from such gaol. And the said courts shall respectively cause their doings therein to be recorded, and shall cause to be erected posts, where necessary to ascertain such established bounds, which bounds shall be posted up at the door of the gaol in some conspicuous place thereon by the sheriff. *L. L. T. pt.* 1. *p.* 45–46. *passed* 9*th July*, 1806.

By whom to be established.

Extent.

To be recorded.

Posts to be erected.

To be posted up at gaol door.

Sec. 2. Whenever any person shall be committed to gaol upon mesne process or execution in any civil suit except as is herein after provided, it shall be the duty of the sheriff, and he is hereby authorised and empowered to permit such person to go at large within the said prison bounds: *Provided always*, That before such permission the person so committed shall have given bonds to the said sheriff for the use of the creditor or creditors, plaintiff or plaintiffs, with two sufficient sureties in twice the sum demanded in such process or in twice the sum for which the execution issued, conditioned that if such person shall not trespass or pass over such bounds until discharged by due course

Debtors to be allowed them.

On giving bonds to sheriff.

Condition.

of law from such commitment, such bond shall be void. *ib. p.* 46. *ib.*

In suits on such bonds judg't. to be rendered.

Sec. 3. If such person, his securities, or either of them shall be sued on such bond for the transgression of passing over or without such established bounds, and final judgment shall be rendered against him or them upon such suit, such judgment shall be for the amount of the former demand, with interest and costs, and execution shall issue thereupon against the body or bodies of such person or persons, and they or either of them be committed to gaol on said execution, then and in every such case, he or they shall not be suffered to have or enjoy the privilege of going at large within such bounds so established. *ib. ib. ib.*

Execution issue.

Def't not admitted to prison bounds.

PROBATE.

See Administration, & Wills & Testaments.

RAPE.

See Crimes and Misdemeanours, sec. 8.

RECEIVERS OF STOLEN GOODS.

See Crimes and Misdemeanours, sec. 17.

RECOGNIZANCES.

See Crimes and Misdemeanours, sec. 29–30.

RECORDER.

Office to be established.

Sec. 1. There shall be an office of record in each and every district which shall be called and styled, "The Recorder's Office," and shall be kept in some convenient place in said respective districts [counties;] and the recorder shall duly attend the service of the same, and at his own proper costs and charges, and shall provide parchment, or good large books of royal or other large paper, well bound and covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances which shall be brought to him for that purpose according to the true intent and meaning of this act.[*] *L. L. T. pt.* 1. *p.* 7. *pass'd* 1. *Oct.* 1804.

Where kept.

Recorders duties.

Recorder to be appointed.

Sec. 2. *There shall be appointed a recorder in each and every district [county] now or hereafter to be erected.*[†]

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[*] *Vide post sec.* 3–5.

[†] *Vide post sec.* 3–4. *Appointment of Recorder abolished. July sess* 1818. *p.* 59.

To give bond to governor.

In $1500, Condition.

Where to be lodged.

But before any of the said recorders enter upon any of their said offices, they shall become bound to the governor and his successors with one or more sufficient securities in a bond for fifteen hundred dollars, conditioned for the true and faithful execution of his office, and for delivering up the records and other writings belonging to the said office, whole safe and undefaced to his successor in the said office; which said respective bonds, shall be filed in the secretary's office and there safely kept, to be made use of for making satisfaction to the parties that shall be damnified or aggrieved, as is or shall be in such cases directed by law. *ib. p. 9. ib.*

Clk. of C. C. ex-officio recorders

Sec. 3. The clerks of the several county [circuit] courts shall be ex-officio recorders of the said several counties, and shall do and perform all the duties appertaining to the recorders office. *L. M. T. Dec. sess.* 1814. *p. 47. pass'd 4th Jan.* 1815.

Clk of Arkansas to be recorder.

Deeds &c. recorded.

Sec. 4. The clerk of the general [superior] court of the county of Arkansas shall be ex-officio recorder within the said county; and shall be authorised to demand and receive for all business by him done as clerk, the same fees and allowances heretofore given to the clerks of the courts of common pleas for similar services. And all deeds, mortgages, conveyances, and other instruments of writing by the said clerk heretofore recorded shall be good and valid in law, so far as respects the recording the same. *ib. p.* 58. *pass'd 7. Jan.* 1815.

Penalty on person not qualified officiating.

Sec. 5. No recorder whatsoever, now or hereafter appointed as aforesaid, shall enter upon or officiate in his said office before he hath given such security as aforesaid, upon pain of forfeiting the sum of three hundred dollars, one half to the district [county,] and the other half to him or them who shall sue for the same, to be recovered as aforesaid. *L. L. T. pt.* 1. *p.* 9. *pass'd* 1. *Oct.* 1804.

Recorders duty.

To make entries of deeds &c.

To record deeds &c. ac

Sec. 6. Every recorder shall keep a fair book in which he shall immediately make an entry of every deed or writing, brought into his office to be recorded, mentioning therein the date, the parties and place where the lands, tenements or hereditaments, granted or conveyed by said deed or writing are situate, dating the same entry on the day on which such deed or writing was brought into his office; and shall record all such deeds and writings in regular succession according to priority.

To give receipts for deeds &c.

No fee for entry or receipt.

Penalty on failure to do his duty.

Or receiving fees improperly

How and by whom recovered and appropriated

cording to their priority or time in being brought into the said office; and shall also immediately give a receipt to the person bringing in such deed or writing to be recorded bearing date on the same day with the entry, and containing the abstract aforesaid, for which entry and receipt he shall take or receive no fee or reward whatever, and if any recorder shall record any deed or writing before another first brought into his office to be recorded, or in any other manner than is herein directed or shall neglect or refuse to make such an entry, or to give such a receipt as is herein before directed, or shall directly or indirectly take or receive any fee or reward for such entry and receipt or either of them he shall forfeit and pay for every such offence a sum not exceeding three hundred nor less than one hundred dollars, one half to the use of the district [county] and the other half to him her or them that shall sue for the same, to be recovered in any court of record by action of debt, bill or plaint, wherein no essoign, protection or wager of law, or more than one imparlance shall be granted. *ib. p.* 12-13. *ib.*

Spanish papers and documents to be recorded.

Copies.

Sec. 7. It shall be the duty of the recorders in the several counties in this territory, to record all and any papers and documents found in their respective offices, which were received from the Spanish authorities at the change of government, on application of any person or persons for that purpose, and after having recorded the same, in the manner prescribed by the laws of this territory, "establishing recorders offices,"* the originals may be delivered to the person or persons applying to have the said record made, he, she or they, paying the recorder's fees, as regulated by the statute of this territory, and a copy of such document or paper after being duly recorded, and certified by the recorder, shall have the same effect in law and equity, that the office copy of any deed acknowledged and recorded after the change of the Spanish government in this territory, has or may have in law. *L. M. T. Dec. sess.* 1815. *p.* 3. *pass'd* 22 *Dec.* 1815.

No tax.

Sec. 8. No tax shall be assessed or collected under any authority of this territory for any record so made, any law of this territory now in force to the contrary notwithstanding. *ib. ib. ib.*

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* *Ante sec.* 6. † *Ante sec.* 7.

REGISTER OF BOATMEN

How and by whom appointed.

Sec. 1. The governor [shall] be authorised to appoint, at such places on the navigable waters of this territory, within any district [county] thereof, as he shall deem proper, a competent person as Register of Boatmen.* The said register shall take an oath of office and give bond in a sum, with security to be approved of by the governor, which sum shall not exceed one thousand dollars for the due performance of the duties enjoined upon him by this act;† and shall provide a seal of office with which he shall authenticate his acts and attestations.‡ *L. L. T. pt. 2. p. 27. pass'd 30th Oct. 1810.*

Oath & bond

REPLEVIN.

May be bro't whether the taking be a trespass or not.

Sec. 1. From and after the passage of this act, in cases where there shall be an actual taking of property whether such taking does amount to a trespass or not, it shall be lawful for any plaintiff to bring his action of replevin therefor the plaintiff in replevin shall be he who brings the action, and the defendant shall be at liberty to plead the general issue and as many other pleas as he shall think necessary for his defence, the plaintiff in replevin, his attorney or agent shall file an affidavit in the office from whence the writ shall issue, to be taken before the clerk or some judge or justice of the peace, of the value of the property to be replevied, and shall give bond and security to the defendant, to be taken by the sheriff, in double the amount of the value so sworn to, conditioned to restore the property if the right should be adjudged against him, and the clerk as a guide to the sheriff shall endorse on the writ the amount so sworn to, and the sheriff shall thereupon deliver the property, mentioned in the declaration, to the plaintiff. *L. M. T. Dec. sess. 1815. p. 11-12. pass'd 8th Jan. 1816.*

Pleas.

Affidavit.

Bond.

Limitation 5 years.

Sec. 2. All actions of replevin under this act shall be brought within five years after the passage thereof, or within five years after such cause of action shall accrue, or within five years after the discovery of the

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* *The powers and duties of Register of Boatman are now also vested in Notaries Public. See Notaries Public sec. 9.*

† *See Boatmen sec. 5 and following.*

‡ *For his fees, See Boatmen, sec. 20.*

Saving to infants, &c.

plaintiffs right, saving to infants, married women, persons of unsound mind, and persons who live beyond the limits of the United States and their territories who shall respectively have the aforesaid term of five years, after their respective disabilities are removed. *ib. p.* 12. *ib.*

No cross replevin &c.

Sec. 3. There shall be no cross replevin hereafter brought, no replevin shall lie to take property out of the hands of an officer, who may have possession of the same by virtue of any legal process to him directed. *ib. p.* 12–13. *ib.*

Affidavit of the right of property in certain cases.

Sec. 4. And in all cases of replevin under this act where the taking of property would not be a tortious taking, the plaintiff, when he files his declaration shall also file an affidavit that he verily believes that property mentioned in the declaration is his property. *ib. p.* 13. *ib.*

Judgment & damages.

Sec. 5. When judgment is entered for the plaintiff he shall have damages assessed by the jury for the detention till the time of bringing the action, and when judgment is entered for the defendant and the property found to be his the judgment shall be that the plaintiff return the property mentioned in the declaration and damages be assessed by the jury for the loss of the use of the property from the time of seizing it by the sheriff. *ib. ib. ib.*

RESCUE.

See Crimes and Misdemeanours, sec. 22.

REVENUE.

Territorial tax.

On confirmed lands &c.

60 cts. per 100 arpens.

Sec. 1. There shall be levied and collected, as a territorial tax, on all lands within this territory claimed as a complete title, and on all lands confirmed or granted by the board of commissioners or the recorder of land titles of this territory, and on all lands claimed or confirmed by any act of congress, a tax of sixty cents for every hundered arpens, and so in proportion for a greater or less quantity. *L. M. T. Dec. sess.* 1814. *p.* 89. *pass'd* 21 *Jany.* 1815.

Lands unconfirmed. *

Sec. 2. There shall be levied and collected, on all pre-emption rights,* and on all lands claimed by virtue

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**So much of this section as provides that there shall be a tax on pre-emption rights to lands and all other parts relating to pre-emption rights to lands are repealed. L. M. T. Dec. sess.* 1814. *p.* 109.

of any concession granted by any officer under the Spanish government and which does not come within the meaning of the foregoing section of this act,[*] a tax of twelve and a half cents for every hundred arpens and so in proportion for a greater or less quantity; *Provided*, That such claimant's personal property shall not be liable for the payment of such tax on unconfirmed land, but only the land itself; and it is hereby declared that there shall be a perpetual lien on all lands made taxable by this act for the payment of taxes or arrearages of taxes which is or may hereafter become due thereon.[†] *ib. p.* 89. *ib.*

12 1-2 cents pr.100 arpens.

Proviso. Personal property not liable for tax.

Lien on lands

Sec. 3. All town lots within this territory together with the houses and improvements thereon, and all lots attached to said towns and within the limits of the same, together with the improvements, if any there be, and also on all dwelling houses in the country shall be fairly and impartially assessed and valued by the proper assessor of the township (or county) within the same may be situated at whatever sum the said assessor shall believe the said lots with its improvements thereon, and houses in the country are worth in ready money and there shall be levied and collected annually, on said assessment or valuation, thirty cents for every hundred dollars thereof and so in proportion for a greater or less sum. *ib. p.* 89–90 *ib.*

Town lots & houses and country houses.

30 cents on each $ 100 valuation.

Sec. 4. There shall be levied and collected for every slave owned or possessed by any person residing in this territory above the age of ten years except such as the county. [circuit] court shall exempt for sickness or disability a tax of sixty two and a half cents annually. And there shall be levied and collected in like manner for every wheel carriage kept for pleasure, the sum of one dollar and fifty cents for every hundred dollars according to its valuation. *ib. p.* 90. *ib.*

Slaves above 10 years.

62 1-2 cents

Pleasure carriages.

$1 50per$100 valuation.

Sec. 5. The tax on stores and on each and every stand used and occupied for selling or retailing merchandize in this territory, shall be fifteen dollars for every six months to be paid to the sheriff of the county where the person shall obtain a license to sell or retail merchandize as aforesaid. And it shall be the duty of the several sheriffs, of this territory to grant to every person applying for the same a license to sell or retail merchandize upon such applicant's paying the

Stores and retailers of merchandize $ 15 pr 6 months.

License to be granted by sheriff

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[*] *Ante sec.* 1.

[†] *See post sec.* 27.

Clerks to issue blanks.

tax as aforesaid. And it shall be the duty of the clerks of the county [circuit] courts, respectively to issue at each term, as many blank licenses under the seal of the county [circuit] court if there be one, as the court may think fit, which licenses shall be in the following form to wit:

Form.

Territory of Missouri, the day in the year one thousand eight hundred and this certifies that A. B. is authorised to sell merchandize within this territory for six months from the date hereof, the said having this day paid to me sheriff of the county of the sum of fifteen dollars it being the semi annual tax imposed on the retailers of merchandize by a law of this territory, C. D. clerk of the county [circuit] court of county.

Effect of license.

And any person obtaining a certificate as aforesaid shall be authorised to sell for six months after the date thereof and no longer.

Person selling without license.

And if any person or persons shall by himself, herself or themselves or by agent sell any kind of merchandize within this territory or on any of the waters thereof, not the growth or manufactory of this territory, not having obtained such certificate as aforesaid, he, she or they so offending shall for every such offence forfeit and pay a sum not exceeding thirty dollars, to and for the use of the territory, to be recovered before any justice of the peace, of the proper county at the suit of the sheriff whose duty it is hereby made to prosecute therefor in his own name as sheriff.

Penalty.

How recovered and appropriated.

Licenses to be charged to shff.

And the county [circuit] court shall charge the sheriff with the amount of such blank licenses to him delivered at each term in a book to be kept by the clerk of said court for that purpose, and at each and every subsequent term, the said court shall settle with the sheriff for the licenses to him delivered at the preceding term, and shall give him a credit for all blank licences by him to them returned, and he shall stand chargeable with the amount of all blank licenses he shall not return.

Sheriff to settle.

Balance agt. sh'ff. to certified to territorial auditor.

And it shall be the duty of the county [circuit] court to cause their clerk to certify the amount with which the sheriff stands charged as aforesaid, as soon as may be, to the territorial auditor who shall charge such sheriff with such amount. *ib. p.* 90-91-92. *ib.*

No person to trade with Indians without license.

Sec. 6. It shall not be lawful for any person to trade or traffic, with goods wares or merchandize of any discription with Indians hunting or residing within the limits of this territory, to which the Indian title has been extinguished, nor shall any person for the purpose of trade or traffic reside at any of the indian towns or hunting camps of any of the indians residing or hunting within the limits aforesaid without a license for that purpose, first obtained from the clerk of the circuit court of the proper county in manner following to wit, the applicant shall present to the said clerk a written permission from the governor of this territory for the time being authorising the said clerk to issue a license to the applicant on his complying with the requisites of the law, and said applicant shall pay therefor for the use of the territory the sum of fifty dollars, besides two dollars to the clerk for his fees and shall also enter into a bond with sufficient security, to be approved of by the clerk, payable to the governor of the territory and his successors in office, in the penal sum of three thousand dollars conditioned that such applicant will faithfully observe all such regulations and restrictions as are or shall be made for the government of trade with such indians, and that such trader will not give away, sell or deliver any ardent spirits to said indians, or cause or permit the same to be done; whereupon the said clerk may issue a license to such person to trade with such indians in such county for one year from the date thereof, and said clerk shall transmit a copy of said bond as soon as may be to the governor of the territory, and file the original in his office. And if any person or persons shall, without such license, remove or reside at or trade or traffic or attempt to trade or traffic, with such indians, at the indian towns or hunting camps of said indians, within the limits of any county in this territory, such person shall on conviction thereof, before any court of competent jurisdiction, forfeit all the goods, wares and merchandize, and effects carried into such place or places, for the purposes of traffic aforesaid, and all furs, peltries and effects in his possession, one half of the value thereof, shall go to the person prosecuting such offender to conviction, and the other half for the use of the territory, and such offender shall moreover be imprisoned for a term not exceeding one year: *Provided always*, That the prohibitions of this section shall not be construed so as to prevent any person or persons who are authorised to vend merchandize, from trading or trafficking with Indians in any town or village (not an Indian town or village) in this territory: *And provided also*, That nothing in this section

How license obtained.

To pay $50.

Bond.

Condition.

Forfeiture for trading without license.

Imprisonment.

Proviso.

contained, shall prevent the inhabitants of this territory, or any of them from trading at their own place of residence, or any merchant not being a pedlar who is licensed to trade at his own store or stand. *ib.* 1816, *p.* 56, *pass'd* 29*th Jan'y.* 1817.

Pedlars.

Sec. 7. Any person or persons, selling goods, wares or merchandize, not the produce growth or manufacture of this territory, by way of peddling or going from place to place to vend the same, shall previous to exposing the same for sale, either by himself or agent, pay to the sheriff of the county wherein he shall so sell or vend said goods, wares or merchandize, the sum of fourteen dollars, and it is hereby made the duty of the sheriffs in the several counties to grant licences to such pedlars, to vend such goods, wares and merchandize in their respective counties for six month, and all monies collected by the sheriffs in pursuance of this section, shall be accounted for by them in the same manner as other monies for licenses are,* and it shall be the duty of the clerk of the circuit court, to issue any number of blank licenses, under the direction of the said court, which licenses shall be in the same form as the licences for venders of merchandize are, except that they shall specially state that the person or persons, who may have obtained such licenses, shall only be entitled by virtue thereof, to vend goods wares or merchandize as a pedlar,* and the sheriff shall be charged with such license, and accompt therefor in in the same manner as is prescribed in the fifth section of the act to which this is a supplement.* *ib. p.* 58. *ib.*

Form of pedlar's license.

Writ or execution $ 1.

Sec. 8. There shall be paid, on each and every original writ and execution, issued out of any court of record in this territory, a tax of one dollar to be paid to the clerk before issuing such writ or execution to be taxed as other costs are. And there shall also be paid on every conviction by verdict or confession in criminal cases, (except those that are capital) a tax of one dollar to be collected by the sheriff as other monies on execution, except where the defendant proves insolvent. And there shall also be paid on each certificate of the clerk of the county court, with the seal of the county annexed thereto (if there be one) and also on each deed or mortgage recorded by said clerk a tax of fifty cents to be paid down: *Provided,* That there shall be no tax paid on certificates issued to vendors of merchandize. *ib.* 1814, *p.* 93–94. *pass'd* 21. *Jan.* 1815.

Conviction in criminal cases.

Clerk's certificate with seal.

Deed or mortgage 50 cts.

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* *Ante sec* 5.

County taxes.
Horses, &c.
Stud horse
Slaves.
Billiard tables.
Single men.
Mills, tan-yards and distilleries.

Sec. 9. There shall be levied and collected as a county tax, in each and every county within this territory, on each horse, mare, mule or ass, above three years old a sum not exceeding twenty five cents; on all neat cattle above three years old a sum not exceeding six and a fourth cents; for each and every stud horse, the sum for which he stands the season; and every negro or mulatto slave between the ages of sixteen and forty five years a sum not exceeding fifty cents; for each billiard-table the sum of twenty five dollars; and every able bodied single-man of twenty one years old and upwards, not being possessed of property of the value of two hundred dollars, a sum not exceeding fifty cents, and on water grist mills and saw mills, horse mills, tan yards and distilleries in actual operation, a sum not exceeding forty cents on every hundred dollars of their valuation. *ib. p.* 95. *ib.*

Unauthorised lotteries.

Sec. 10. All private or unauthorised lotteries or schemes of any description, for the disposal of money or other property, shall be and they are hereby taxed fifty per centum, on the value of the money or property proposed to be disposed of as stated in the scheme or plan of said lottery, which tax shall be paid into the county treasury, and it shall be the duty of the sheriff of the county where any lottery is made or proposed to be drawn to collect the tax hereby imposed in the same manner as he is authorised to collect the territorial taxes. *ib.* 1815. *p.* 134. *pass'd* 24. *Jan.* 1816.

Shffs. or their sworn deputies to do the duties of assessor.
Oath to be taken.

Sec. 11. It shall be the duty of the sheriffs of the several counties within this territory, either by himself or sworn deputy or deputies, to be approved of by the court to do and perform all and singular the duties assigned by law to the several assessors directed to be appointed under the act to which this is a supplement.* And the said sheriffs shall, before they proceed to make their assessments take the same oath now required of assessors.† *ib. p.* 128. *ib.*

List of taxable property to be

Sec. 12. It shall be the duty of every person within this territory to give to the assessor of the county given to assessor.

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* *Post sec.* 17.

† *The oath here alluded to is in the following form, viz. I, A B. do solemnly swear (or affirm as the case may be) that I will deligently, faithfully and impartially, to the best of my abilities and judgment, perform the duties of assessor enjoined on me by law, for the township of in the county of which oath or affirmation may be made before any judge or justice in such county L. M. T. Dec sess.* 1814 *p.* 96 *The act which contained it, is repealed by L. M. T. Dec. sess.* 1815. *p.* 134.

wherein such persons resides on oath or affirmation, according to the best of his, her or their knowledge, a just true and faithful list according to law of all taxable property which such person may have owned or possessed in said county on the first of January in every year. 1816. *p.* 55. *pass'd* 29, *Jan.* 1817.

Persons chargeable with taxes to give list to assessor on oath.

How lands to be described.

On neglect to make such list or giving in a fraudulent one. Assessor to list property.

Taxed double.

Shff. to collect.

Auditors certificates.

Sec. 13. *It shall be the duty of every person within this territory to give unto some one of the assessors of the county where such person resides, on oath or affirmation, according to the best of his, her or their knowledge a just true and faithful list of the property made taxable by this act, which he may have owned or possessed on the first day of April every year** which oath or affirmation the assessors are hereby authorised to administer. And every person entering lands with the assessor for taxation shall particularly state where such land is situated, in what county, on what water course, the quantity of arpens, by what title claimed and by whom originally owned (if he knows it) and it shall be the duty of the assessor to insert the same on his list accordingly. And in case any person shall wilfully neglect or refuse to give such list as aforesaid or shall give in a fraudulent list, it shall be the duty of the assessor to list and enter the same upon his own knowledge thereof or upon the best information he can procure and the land or property so listed by the assessor himself, shall be taxed double, which it shall be the duty of the assessor to specify in his general list. And it shall thereupon be the duty of the sheriff to collect and pay over the same according to the provisions of this act: *Provided*, That the sheriff shall be bound to receive territorial auditor's certificates at their full value in payment for territorial tax. *ib. p.* 96–97. *pass'd* 21. *Jan.* 1815.

Residents to enter lands, &c.

On failure,

Taxed double.

Sheriff may sell any lands, &c.

Sec. 14. It shall hereafter be the duty of all residents of this territory, owning or claiming any lands lying in any part of this territory, made taxable by law, to enter the same for taxation with the assessor of the county wherein the land lies and in failure thereof, it shall be the duty of such assessor to list and enter the same from the best information he may possess or acquire, and in that case shall impose double the usual tax on such land, and the sheriff of the county wherein such owner or claimant resides shall have full and complete power and authority to sell any land to pay taxes due thereon and such sale made, according to law,* shall transfer and vest all the right, title or claim of any person or persons whatsoever thereto in the purchaser subject to redemption according to the provisions of the act to which this is a supplement.† *ib.* 1815. *p.* 131. *and Dec. sess.* 1816. *p.* 55. *pass'd 29th Jan.* 1817.

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* *Now 1st Jan. See ante sec. 12, by which this clause is superseded.*

Form of list of lands.

Sec. 15. The list for taking in lands subject to taxation shall be in the form following to wit:

Persons names charged with taxes.	Number of acres of confirmed land.	For confirmed land not given in for the year 1815	Number of acres of unconfirmed land	For unconfirmed lands not given in for the year 1815.	County in which the land lies	Water courses on which land lies	Original claimant when known.

L. M. T. Dec. sess. 1815. *p.* 129-130. *pass'd 24, Jan.* 1816.

Shff. to give a a copy of the assessment to the owner,&c.

Sec. 16. And it shall be the duty of the sheriff in all cases when taking in taxable property to deliver to the owner thereof a perfect transcript of the same stating every item and what will be the probable amount of the tax thereon and sign his name thereto as assessor: *Provided*, That the sheriffs shall not be entitled to receive any compensation for their services for assessing.‡ *ib. p.* 129. *ib.*

Shff. not to receive any compensation

Assessors to make returns of assessment.

Sec. 17. It shall be the duty of each assessor to proceed to list and assess all persons and property within his township made taxable by this act, and make return thereof to the clerk of the county [circuit] court§ within forty days after receiving such list, and the county courts shall at their next session to be holden after the assessor shall make return as aforesaid, provided it be within thirty days, hear and determine all appeals from such persons as may think themselves aggrieved by the assessment of the assessors.§ And in case the regular term of said court should not be within thirty days after such returns, then the said court shall hold

Proceedings thereon.

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* *Vide post sec.* 24.

† *See post sec.* 26.

‡ *See post sec.* 37.

§ *See section* 18 *and the note to the end of this section.*

List to be made out by clerks, &c.

Clerks compensation.

a special session for the purpose of hearing appeals: *Provided*, The justices or any two of them shall cause their clerk to give ten days notice by advertisement in two places in each township stating the time such special session of the court will be held. And as soon as they may have heard and determined all appeals and corrected the lists of the assessors they shall cause their clerk to make out three copies of the whole lists of taxable property in said counties in alphabetical order one of which shall be delivered to the sheriff within ten days after making out the same, who shall at the time of receiving the same acknowledge the receipt thereof on the other two in writing endorsed on the same one of which shall be forthwith transmitted to the territorial auditor and the other shall remain in the office of the clerk of the county [circuit] court.* *The assessors shall receive each per day the sum of two dollars to be allowed by the county court on the oath of such assessors to be paid out of the county treasury.*† And the clerks of the county court shall respectively receive for the services required to be performed by them under this act, annually, such sum as the county courts may think proper to be allowed. to be paid out of the county treasury.‡ *ib.* 1814. *p.* 97–98. *pass'd* 21 *Jan.* 1815.

Clerk to hear appeals on assessments.

List to be returned to sheriff. &c

Sheriffs compensation.

Sec. 18. It shall be the duty of the clerk of the circuit courts to hear and determine appeals of all persons aggrieved by the assessment of the sheriff. giving twenty days notice thereof and after having redressed such grievances shall deliver over to such sheriff such list or lists for collection, and it shall be the duty of such sheriff to collect and pay over all such taxes as is directed in the act to which this is a supplement,§ *and said sheriff shall be allowed ten per centum on all such money collected and paid over as the law directs.*¶ *ib.* 1815. *p.* 129. *pass'd* 24 *Jan.* 1816.

List of taxable property, &c

Sec. 19. And it shall be the duty of the clerks of circuit courts, at the first term of said courts annually, after the sheriffs have made their assessment returns, to make out and deliver to the sheriffs a list of all taxable property, as the clerks of the county courts are now

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**See sec. 18 and note to the end of this section.*

†See post sec. 37.

‡ So much of this section as is incompatible or inconsistant with the provisions of the 16 18 19 sections is repealed. *L. M. T. Dec. sess* 1815, *p* 134

§See sec. 22 and following.

¶See post sec. 37.

directed to do,* together with one fair and perfect transcript of all lands in his county made taxable by law, which shall be made out from the transcript furnished him by the territorial auditor, whereupon it shall be the duty of the sheriff to collect the amount of taxes contained in said list, and pay them over according to the provisions of the act to which this is a supplement.† *ib. p.* 128 *ill.*

Non residents lands to be entered with auditor.

To be register ed by auditors.

Auditor to list lands of non residents, &c.

And send list to the sheriff of proper county.

Shffs. duties.

Sec. 20. All lands hereby made taxable and owned or claimed by non residents shall be entered or listed by such non resident his her or their agent with the auditor of public accounts for this territory on or before the first day of July next. And the auditor shall keep a book in which he shall carefully enter each and every tract or claim of land hereby made taxable, and owned or claimed by non residents, stating the nature of the claim, the quantity of land, the county and water course where the same is situated. And it shall be the duty of the auditor, in all cases where the lands are owned or claimed by non residents hereby made taxable, and not listed or entered with him for taxation as aforesaid, to list and enter the same himself from the best information he can procure, which it is hereby made his duty as far as practicable to acquire. And the said auditor shall, on or before the first day of *August in every year,* forward to the sheriff or collector of each county in this territory, a list of the lands, owned or claimed by non residents, situated in his county, whereupon the sheriff or collector shall be bound to receipt therefor to the auditor and proceed to the collection of the tax due on all lands contained in said list and pay the same over in the same manner and at the time and under the same regulations and penalties as are provided by this act. *ib.* 1814. *p.* 102-3. *pass'd* 21 *Jan.* 1815.

Purchasers of non residents lands how to proceed.

Sec. 21. Where any tract or parcel of land owned or claimed by any non resident and listed with the auditor shall be sold or transferred it shall be the duty of the purchaser, if he be a non resident, to file with said auditor on or before the day that he makes his annual list to forward to the different sheriffs as aforesaid, a duly certified copy of his or her deed or transfer whereupon the auditor shall enter or list the same for taxation in the name of the purchaser. And no sale change or transfer of any tract of land contained in the auditor's list shall in any manner effect or prevent the collection of taxes due thereon at the time of such sale, change or transfer. *ib. p.* 103. *ib.*

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*See sec. 17

†See sec 22 and following.

Shffs.bond for collection.

Of county taxes.

Condition.

Where filed.

Territorial taxes.

Condition.

Where filed.

Sec. 22. The sheriffs of the respective counties within this territory shall annually, previously to entering on the collection of the taxes levied for county purposes, enter into a bond with two or more securities, in a sum at least double the amount of the assessors list, to the governor and his successors in office, conditioned that he will faithfully collect and pay according to law, all monies to be by him collected by this act for county purposes, which bond shall be recorded and filed with the clerk of the county [circuit] court. And the sheriff shall, before he enters upon the collection of taxes to be by him collected for territorial purposes, enter into a bond with two or more securities in a sum at least double the amount of the assessors list, to be approved by the court, made to the governor and his successors in office, conditioned that he will according to law, collect and pay over into the territorial treasury all taxes and other monies made collectable by him, by this act, at the times therein required, which said bond shall be filed in the office of the governor. *ib. p.* 98–9 *ib.*

On failure to pay taxes.

Shff. may destrain and sell property.

Proviso.

Shff. to give receipts, &c.

On failure or chargingmore

Sec. 23. If any person charged with territorial or county taxes by virtue of this act shall neglect or refuse to pay the same to the sheriff, when demanded, the sheriff or his deputy shall have power to destrain the property of such delinquent (except for tax on unconfirmed land and preemption rights* in which cases the land itself or claim thereto shall only be destrainable) and after giving ten days previous notice, shall proceed to sell the same to the highest bidder: *Provided always*, That the delinquent may at any time before the property destrained, is sold demand and receive the same on tendering the amount of tax due and the expence of keeping the same, the overplus of every sale made for the non payment of taxes shall be paid by the sheriff to the owner after deducting his fees and expences. And it shall be the duty of the sheriff to give to each person a receipt, at the time of receiving any territorial or county tax, specifying the amount of the money received and for what tax. And any sheriff neglecting or refusing to give such receipt, or who shall knowing ly demand and receive of any person, any greater sum than is contained in said sheriff's tax list against such person, every such sheriff offending shall forfeit and pay the sum of twenty dollars to the party injured, to be recovered by action of debt before any justice of the peace of the proper county. *ib.* 99–100 *ib.*

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*See note to sec. 2.

tax than is due.

Penalty.

How recovered.

Sec. 24. And in all cases where the sheriff cannot find sufficient personal property whereon to levy and make distress for the payment of taxes according to the provisions of this act, it shall and may be lawful for the sheriff to sell at the court house door of the county by public sale, on the first Monday of November annually, so much of each tract of land chargeable for taxes, as will be sufficient to pay the amount of taxes due thereon. And the said sheriff shall previous to such sale give notice thereof at least sixty days by advertisement in some newspaper printed in this territory, or in case there be none printed in this territory, then in some newspaper printed in the next adjoining territory or state, and by advertising, at the court house door, the time and place of sale, particularly describing the land and the different tracts to be sold. And the sheriff shall deliver to the purchaser a certificate of the quantity of land sold describing therein the tract which was chargeable with taxes. And the part so sold shall be taken as near as may be in a square, and it shall adjoin one or other of the outlines or corners of the survey of such tract of land so as not to include an improvement if to be avoided. And a designation of the parts so sold shall be made by the sheriff at the time of such sale. And in cases where the claim or part of a claim of land sold for taxes under this act shall not have been surveyed by the proper authority of the United States or shall be so uncertain as to locality or identity, that the county surveyor cannot ascertain the boundaries of the claim, the purchaser shall be entitled as near as possible to the part designated by the sheriffs advertisment for the sale of such land and the land to be laid of as soon as the claim itself shall be identified. *ib. p.* 103–4 *ib.*

In default of personal property. lands be sold.

When.

60 days notice to be published.

Shff. to give certificate to purchaser.

Part to be sold how designated.

Designation of the part to be sold, &c.

Where there has been no survey, &c.

How to proceed.

Sec. 25. When any tract of land offered for sale for the payment of taxes shall not be sold for the want of bidders, and the said taxes thereon not being paid, it shall be the duty of the sheriff to forward to the auditor a list of lands not sold as aforesaid, on oath at the time when he pays over monies or taxes on land by this act made payable into the territorial treasury, for the a-

Lands not sold for want of bidders.

List to be returned to auditor.

mount of which said list, the auditor shall give said sheriff credit in the settlement of his account. And it shall be the duty of the territorial auditor annually to issue an order to the sheriff of the proper county to proceed to sell such lands as have not been sold for want of bidders or such part thereof as will pay the arrearages of taxes due thereon. And it shall be the duty of the sheriff, at all times when he collects the taxes of the present year to collect all arrearages of taxes due as aforesaid, for which he shall receive the auditors order. And no sheriff shall either directly or indirectly be concerned or interested in the purchase of any tract of land sold for the payment of taxes under the penalty of five hundred dollars to be recovered by indictment or information, the sale and purchase in such case is hereby also declared to be utterly null and void. *ib. p.* 104–5. *ib.*

Lands to be ordered for sale.

Shff. to collect all arrearages, &c.

No sheriff to be a purchaser.

Penalty.

Sale void.

Sec. 26. The surveyor of the county on the receipt of the sheriffs certificate of land sold for taxes shall by himself or deputy proceed to survey and lay off the quantity of land agreeable to said certificate, and charge the expence of making a survey and plat thereof to the purchaser or his or her heirs or assigns and on the plat and certificate of survey being presented to the sheriff or his successor in office it shall be his duty to convey the same to such purchaser or his heirs or assigns by deed in due form of law executed, which survey and deed shall vest in the purchaser or his or her heirs or assigns all the right, title, claim and interest to said lands (the right of the United States only excepted) to the part so sold. But the said sheriff may nevertheless convey any lot or tract of land sold for taxes without having the same surveyed when the whole tract or lot is sold: *Provided,* That if any person or persons, his, her or their lawful agent or attorney shall within twelve months from and after the day of sale pay or tender to the said purchaser his, her or their legal heirs or representatives or lawful agent or attorney the amount of such tax, together with the costs of sale and survey and one hundred per cent interest per annum on the same and likewise to pay to the purchaser for all improvements that are made by said purchaser on said land at their just and real value, his, her or their lands shall therefrom be discharged and redeemed from such sale: *Provided however,* That nothing herein contained shall be considered in law as a

County surveyor to lay off lands.

Purchaser to pay expense.

Shff. to make deed.

Title vested in purchaser.

Sheriff may convey without survey, &c.

Power of redemption.

One year after sale.

Infants.

bar to the right or equity of redemption which any infant, person of unsound mind, in captivity or beyond the limits of the United States, or in the military service of the United States may have in the land so sold: *And provided also,* That the tax on said land together with the interest thereon and an equitable compensation for improvements made on said land be tendered to the purchaser or his assigns within one year after such disabilities be removed. *ib. p.* 106–7. *ib.*

One year after disability removed.

Sec. 27. The lien which the territory has on any tract or tracts of land or claims thereto for the payment of taxes imposed and due thereon shall not be affected by any transfer whatever, and all sales of any tract or tracts of land or claim thereto by the sheriff or other proper officer according to the provisions of the act to which this is a supplement,* shall be deemed good and valid in whose name soever the said land or claim thereto shall be entered or sold, unless he, she or they contesting the validity thereof shall shew that the tax had actually been paid thereon, which in all cases shall be the first thing required of any one attempting to set aside a sale under this or the act to which this is a supplement.* *ib.* 1815. *p.* 130. *pass'd* 24. *Jan.* 1816.

Lien on lands for taxes, not affected by transfer.

All sales by shff. for taxes deemed good.

Unless it be proven that taxes were paid.

Sec. 28. If any tract of land or claim thereto of either residents or non residents will not, when exposed to sale as aforesaid sell for the taxes and costs due thereon it shall be struck off to the territory who shall be considered the purchaser thereof, and it shall be the duty of the sheriff making such sale to make a title for the same to the governor of the territory and his successors in office, for the time being, in trust to and for the use of the said territory in such manner as the other titles are by him made to other purchasers, and the governor shall, on such titles being made to him draw on the territorial treasurer in favour of the sheriff for the amount of all costs due to him on such sales, who shall pay the same accordingly. *ib. p.* 130–1. *ib.*

Lands not selling for amount of taxes and costs.

To be struck off to territory.

Shff to make a deed to the governor

Governor to draw on treasurer for amount of costs

Sec. 29. The several sheriffs within this territory shall on the first Mondays in June and December annually, publish in the paper of the public printer, a list of all monies received or which they ought to have received for tavern licenses, licenses to retailers and all other licenses on which territorial tax is imposed, with the name of each individual to whom such license has been granted.† *ib. p.* 133–4. *ib.*

Shff to publish a list of licenses, &c and monies rec'd. for them.

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* *Ante sec.* 26. † *Expence of publication allowed post sec.* 33.

Courts to settle with individuals.
And order certificates.
Form.
To be a legal tender for county taxes.

Sec. 30. It shall be the duty of the county [circuit] court, respectively to audit, adjust and ascertain the amount due from the county to any individual and having ascertained the same according to law shall order the sheriff to pay the same. On which order being made, the clerk of the county [circuit] court shall issue a certificate for the amount thereof in the following form, viz. "I do certify that the sum of is due to by the county of for value received. And the sheriff of said county is hereby directed to pay the said or bearer on demand the said sum of ." Which certificate shall be signed and attested by the said clerk and the same is hereby declared to be a lawful tender for county taxes. *ib.* 1814 *p.* 100. *pass'd* 21, *Jan.* 1815.

Sheriffs to settle with C. C.
Certificates to be credited.
Penalty on neglect.
How recovered.
Balance found against shff.
Judgment to be rendered.
In whose favour.

Sec. 31. The sheriffs of the respective counties within this territory shall settle with the county [circuit] court, of their proper county, at every regular term, and all certificates by them taken up as county treasurer shall be entered as a credit in their favour by the county [circuit] court in a book to be by them kept for that purpose, in which shall be entered the date, number and amount of such certificate. And if any sheriff shall neglect or refuse to settle with the county [circuit] court as aforesaid, he shall, for every such neglect or refusal forfeit and pay, for the use of the county for which he is sheriff, one hundred dollars to be recovered in the circuit court, in the name of the justices of the county [circuit] court on motion of the circuit or prosecuting attorney the said sheriff having had ten days previous notice, and for which sum and costs execution shall issue as in other cases. And if on any settlement or adjustment of the accounts of any sheriff had, before the county [circuit] court, of the county of which he is sheriff, it shall appear that there is a balance of the county taxes in his hands, it shall be the duty of each county [circuit] court to enter up a judgment or judgments against such sheriff to the amount of such balance in favour of the person or persons who may present to them a certificate or certificates of the late auditors of districts or counties, or by the clerks of the late courts of common pleas or in virtue of the sixteenth section of this act* authorising the payment from the county treasury giving preference to the date of the certificates presented at the same time: *Provided*, That no judgment shall be entered up against any sheriff by virtue of this section unless it shall appear to the court that the sheriff has refused to pay ~~the~~ amount of the certificate or certificates on which judgment may be entered: *Provided also*, That ten days notice shall be given to the sheriff of such intended motion. And it shall be the duty of the clerk to write on each certificate that the same is satisfied, under which each justice then present shall subscribe his name: *Provided*, That the county [circuit] courts shall receive a sufficient excuse from the sheriff for the amount of taxes due from persons who may remove from the county or who may prove insolvent, upon the sheriffs making oath that he has used due exertion to obtain the same or to the fact of insolvency or removal, whereupon it shall be the duty of the county [circuit] courts to give such sheriff a credit to the amount thereof.* And it shall be the duty of the county [circuit] courts to cause their clerk to make out certified copies under the seal of the court (if there be one) and transmit the same to the sheriffs of the counties where such delinquents may have removed, and it shall be the duty of said sheriffs to collect the several amounts so certified and transmit the same to the sheriff of the county from whence such certificate issued under the same provisions and directions that they are bound to collect and pay over other monies collected for taxes, and shall receive the same per centum for the same. *ib. p.* 100-1-2. *ib.*

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* *Ante sec.* 30.

Notice of motion.

Satisfaction to be entered on certificates.

Removals and delinquencies

To be credited

List of removals to be transmitted to shff.

Duty of shff.

Sec. 32. *Provided*, That no sheriff shall be entitled to any credit for delinquencies unless such sheriff publish his delinquent list according to the directions of the 23d section of the act to which this is a supplement.† *ib. Dec. sec.* 1815. *p.* 129. *pass'd* 24. *Jan.* 1816.

Shff not allowed for delinquencies unless, &c.

Sec. 33. The circuit court of the respective counties, shall allow their sheriffs the actual expence by them incurred in publishing the delinquent lists and lists of of tavern and other licenses. *ib.* 1816. *p.* 58. *pass'd* 29*th Jan.* 1817.

Sheriffs to be allowed for publishing delinquent lists, &c.

Sec. 34. The clerks of the several courts of record within this territory shall on the first Mondays in March and September annually, pay over to the respective sheriffs all monies received, or which ought to

Clerks to pay over amounts rec'd by them.

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* *Delinquent list to be published, post sec.* 32—38. *Expences paid, post sec.* 33.

† *Sec.* 38.

Clerk to make out a statement of taxes rec'd by him.

Shff's to pay into territorial treasury all monies &c.

have been received by them for tax on writs and executions as well as the tax on county seals (if there be one,) deeds, mortgages and other instruments of writing on which a tax is to be paid and all other monies by them received for the use of the territory, and take the sheriffs receipt therefor. And the said clerks shall respectively, at the same time, make a statement of all writs and executions by them issued, and of all convictions in criminal cases (except those that are capital) and of all deeds, mortgages and other writings, and the amount of tax on county seals (if there be one) in pursuance of this act, and also, of all fines imposed and monies received or which ought to have been received for fines, tavern and ferry licenses within the last six months preceding the time of making such statement, together with a copy of the receipt, taken by the clerk or the sheriff as aforesaid, which statement and copy of receipt the clerk shall forthwith transmit to the territorial auditor, who shall thereupon charge the amount of such statement and copy of receipt to such sheriff. And the several sheriffs within this territory shall, on the first Mondays in June and December annually, pay into the territorial treasury all monies by them received, or which they ought to have received, for licenses for selling and retailing merchandize, tavern and ferry licenses, fines, tax on writs, executions, convictions, county seals (if there be one) deeds, mortgages and other instruments of writing. *ib.* 1814. *p.* 94–5. *pass'd* 21. *Jan.* 1815.

List of monies due territory to be sent to territorial auditor.

Sheriffs receipt for tax lists.

Sec. 35. It shall be the duty of the several clerks of the circuit courts within this territory, at the time they are obliged by law to transmit the lists of all monies due the territory, the amount of such list in writing, incorporated in the body of the certificate and affix the seal of his office thereto; and if any clerk shall forward a list of monies due the territory to the territorial auditor, without such certificate, seal and the amount of such list incorporated as aforesaid, in the body of the certificate, upon being thereof convicted, before any court having competent jurisdiction, he shall be removed from office, and each and every sheriff shall on receiving the list of property made taxable by law in his county, acknowledge the receipt and amount of such list, on the other two in writing endorsed on the same. *ib.* 1816. *p.* 58. *pass'd* 29. *Jan.* 1817.

Sheriff to pay

Sec. 36. It shall be the duty of each and every monies over annually in certain cases.

Deducting sheriffs allowance.

Sheriff to pay over amount, &c.

Shff's compensation.

Sh'ff failing to pay over, &c.

To be charged 20 pr. cent on deficit and proceeded against

sheriff within this territory, on or before the first monday of December in every year, to pay into the territorial treasury all monies charged on the tax list, and lists of non-residents' lands put into their hands for collection, first deducting the tax on lands not sold for want of bidders and delinquents allowed by the court, *together with eight per cent on all monies by them paid into the territorial treasury*.* And the said sheriff shall collect the amount of county taxes put into their hands for collection, and be liable to pay the same to the orders of the county [circuit] court from and after the first monday of October in each and every year. *The sheriffs shall be respectively entitled to receive eight per centum on all county taxes by them collected and paid out** and if any sheriff shall fail or neglect to pay into the territorial treasury the amount with which he stands charged, at the time by this act required, such delinquent sheriff shall be charged by the auditor with the sum of twenty per centum on the amount then due from such delinquent sheriff. And the auditor shall immediately forward to the circuit or prosecuting attorney, of the circuit or county in which such delinquent sheriff resides, and it shall be the duty of such circuit or prosecuting attorney to proceed against such delinquent sheriff and his securities for the said amount and recover judgment for the same before the superior or circuit court on giving the said sheriff and his securities ten days notice. *ib.* 1814. *p.* 105. *pass'd* 21 *Jan.* 1815.

Sheriffs compensation.

Sec. 37. Instead of the compensation now allowed by law for assessing and collecting the territorial and county taxes, the sheriff shall be allowed for assessing and taking the list of taxable property four per centum on the amount of monies collected after the assessors' list is corrected by the clerk of the circuit court on appeal and six per centum on the amount of monies collected, for collecting territorial and county taxes. *ib.* 1816 *p.* 61 *pass'd 29th Jan.* 1817.

Clerks to make statement annually, &c.

Publish them

Publication be allowed.

Sec. 38. It shall be the duty of the clerks of the county [circuit] courts respectively, annually, in the month of November to make out a fair and perfect statement, in detail under his hand and the seal of the court, if there be one, of receipts and expenditures of their respective counties, and cause the same to be published in the most public newspaper in this territory. And it shall be the duty of the court to allow said clerk

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*Altered post sec. 37

Sh'ff to publish lists of delinquents.
Auditor to make out and publish, &c.
Allowed for publication.
Statement to be laid before legislature.
Clerk, sh'ff or auditor failing
Penalty.
How recovered.

the actual expence by him expended for publishing the same, out of the county treasury. And it shall be the duty of the several sheriffs of the respective counties annually to make out and publish in like manner a true statement of all delinquents* in their respective counties. And the territorial auditor shall also make out and publish a true statement, in like manner, of all receipts and expenditures of the territory, annually, to whom paid and under the provisions of what law, in the month of December, and shall be allowed for his actual expense in publishing the same out of the territorial treasury. And the said auditor shall lay such statement before the general assembly as soon as may be, after its convention in each year.† And any clerk, sheriff or the territorial auditor failing or neglecting to make out and publish such statement as aforesaid shall forfeit and pay a sum not exceeding three hundred dollars to be recovered upon motion of the circuit or prosecuting attorney in any court of record having competent jurisdiction upon such delinquents having ten days notice thereof. *ib.* 1814. *p.* 107–108. *pass'd 21st. Jan.* 1815.

Acts to be kept by auditor.
Treasurers accounts adjusted.
Interest on warrant when to cease.

Sec. 39. The territorial auditor shall charge the territorial treasurer with the amount of all monies paid into the territorial treasury and shall give said treasurer a credit for the amount of all pay which he may have made, and which shall be supported by sufficient vouchers, and if after comparing the treasurers books and vouchers, and striking the balance the auditor shall find that the treasurer's credits are justly and lawfully supported, he shall make the balance on the auditors books to agree with the balance on treasurer's book, by giving said treasurer a credit for all monies he may have heretofore paid on certificates, collectors commissions, interest on certificates, and officers salaries, or that he may hereafter pay on certificates, interest on certificates and officers salaries, provided that after the passage of this act, the treasurer shall not give sheriffs or collectors a credit for the amount of their commissions for collecting nor shall any warrant be entitled to draw interest after the first day of September one thousand eight hundred and seventeen, except such warrant shall have been presented to the territorial treasurer for payment and the

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**See ante sec.* 32 *and* 33

†*Post sec.* 40

payment thereof refused by said treasurer for want of funds in said treasury, in which case the said warrant shall bear interest and the treasurer shall on such warrant being presented to him note thereon the time it was presented for payment. *ib.* 1816. *p.* 60. *pass'd* 29*th Jan.* 1817.

Sec. 40. It shall be the duty of the territorial treasurer, to state the balance on his books annually, on the second monday of December, so as to show, the amount of monies received and paid out and the balance if any remaining in the treasury, and shall compare, examine and settle his said book with those of the auditor, and it shall be the duty of the auditor to lay before the legislature in the month of December at each and every session of the Legislature a statement of all monies received in the treasury for the use of the territory and of all monies actually paid out, and to whom and on what account and under what law, the amount of the balance remaining in the treasury, if any, and the amount of certificates which may be there issued and remain unpaid. *ib. p.* 60. *ib.*

Treasurer to state balance, when.

Auditor to report to legislature, when

RIOTS, ROUTS, &c.

See Crimes and Misdemeanours, sec. 25.

ROADS AND HIGHWAYS.

Sec. 1. All the roads, in the several counties in this territory that have been laid out by order of any court according to law shall be and they are hereby respectively declared to be public roads and the said courts of common pleas [circuit courts] in the several counties of this territory, now established or hereafter to be established shall have full power and authority, on application to order the laying out of any public road or roads throughout their county when the same shall by them be deemed necesesary, and to discontinue such public roads as now are or shall hereafter be found useless, burthensome and inconvenient, and to alter the roads now, or hereafter to be established, as often as occasion shall require. *L. M. T. Dec. sess.* 1813. *p.* 71 72. *pass'd* 18*th Jan. in force* 1*st Mar.* 1814.

Heretofore established confirmed.

Circuit courts empowered to lay out.

Discontinue.

Or alter any road.

Sec. 2. Whenever a petition shall be presented to the court of common pleas [circuit court] signed by twelve or more house holders inhabitants of the county praying for the establishment of a public road from a

On petition to the court.

Commissioners to be appointed.
Qualifications.
To take oath.
Com's. to lay out road,
And make return.
Return to be published.

certain place therein specified: it shall be the duty of such court thereupon, if the petition shall appear reasonable, to appoint not less than three nor more than five commissioners, any three of whom shall have power to act, which said commissioners shall be house holders resident in said county and not interested or living in the direction the road is to be run out. And the said commissioners shall respectively take an oath before any judge of the court or justice of the peace of the said county to view and mark out the said proposed road, the nearest and most practicable route, and to the greatest ease and convenience of the inhaitants and as little as may be to the prejudice of any person or persons. And shall be the duty of the said commissioners to proceed as soon as may be to lay out the said road, and make a return thereof under their hands to the next court (noting thereon the distances and courses as near as practicable of such proposed road) which return so made shall be filed, and the said court shall thereupon cause the clerk to publish, by putting up at the court house door of the proper county, a transcript of the petition and return for the information of the inhabitants of said county. *ib. p.* 72–73. *ib.*

Objections how made.
Proceedings thereon
Inquisition ad quod damnum
Return.
Damages how paid.
Damages exceeding utility road to be

Sec. 3. When the road so laid out shall pass through the lands of any person or persons who shall object or consider themselves aggrieved by the same it shall be the duty of said court on application in writing from the person or persons so objecting, at the next term of the said court after the return is made by the commissioners aforesaid, to issue their precept, directed to the sheriff or coroner (as the case may be) ordering him to summon a jury of twelve house holders, resident in said county and not interested or living on the direction of said road, and to proceed to the ground through which said objection has been made to the passing of said road, and upon actual view and upon oath to enquire and certify to said court what damages if any and how much in their opinion accrue to the owner or owners of such ground by the passing of the road through the same. And the said sheriff shall return the inquisitions so by him made, signed by all the jury to the next court after the same is taken and it shall be the duty of the court to order the damages so assessed to be paid out of the county treasury: *Provided nevertheless*, That when it shall appear to the court that the damages so assessed transcend the utility of that part of said road, such court shall order the same to be altered in such manner as to do such person or persons the least possible injury unless the person so complaining or objecting shall agree to accept such compensation as shall be deemed just and reasonable by the said court: *And provided also,* That nothing shall be allowed to any person or persons where such road passes through his or their unimproved lands: *And provided further,* That if no objection is made or sufficient reason shown to said court during the term to which the return of the commissioners shall have been made why the proposed road so designated as aforesaid shall not be allowed and established, the said court shall declare the said road so designated to be a public road and highway so to remain until altered by authority of law. *ib. p.* 73–74; *ib.*

changed unless, &c.

No damages to be allowed for unimproved lands

When no objection made to be established.

Sec. 4. All public roads laid out as now in use or which shall be hereafter laid out, shall be cleared of all trees and brush at least twenty feet wide, and such limbs of trees as may incommode horsemen or carriages shall be cut away and no stump shall exceed twelve inches in height; all bridges or causeways made or to be made over small water courses and causeways over swamps or low lands shall be made and kept in repair by the hands subject to work on the roads where the same may be necessary and the materials wherewith the same shall be made, may be taken from any land the most convenient to such causeways or bridges, and shall be laid across the road and be at least twelve feet long well secured and made fast and covered with earth. *ib. p.* 74–75; *ib.*

To be 20 feet wide clear of obstructions

Bridges and causeways to be made

Where materials to be taken from.

How to be made

Sec. 5. *All free male inhabitants between the age of sixteen and forty five years and all male slaves of the same age shall be subject to work on the public roads.** And it shall be the duty of the court of common pleas [circuit court] in each county, *within four months after the passage of this act,*† to appoint one or more justices of the peace in each township, whose duty it shall be, to lay off the several roads therein into road districts of convenient length; who shall make return of divisions and the number of them in their townships to the next court of common pleas for said county. And the said court on the receipt of said return from said justice or justices shall at the same term proceed to appoint one fit per-

Who subject to work on roads.

Road districts.

Overseers to be appointed.

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* *Superseded, post sec.* 6.

† *Superseded, post sec.* 7

Notice to be given them.

Labour to be apportioned by J. P.

son, being a house-holder, in each district or road division. And the clerk of the court of common pleas shall within twelve days after the appointment of the overseers as aforesaid of the several districts, notify them of their appointment. And it shall moreover be the duty of the justice or justices of the peace laying out the road divisions in his or their townships from time to time to apportion the persons therein, subject to work on said roads, among the several districts in such manner and in such proportions as they should deem just and equitable, regarding as far as possible the convenience of the people and the situation of the roads, and to give to each overseer of roads in the township a copy of the appointment so made and a list of the names of those who are to work his road division. *ib. p.* 75–6. *ib.*

Who liable to work.

Sec. 6. All able bodied free white males between the age of sixteen and forty five years, and residents for ninety days within any county in this territory, and all able bodied male slaves of the same age and residence, shall be subject to work on the public roads and highways in such county. *ib.* 1816. *p.* 130. *passed* 1. *Feb.* 1817.

Duty of circuit courts.

Sec. 7. It shall be the duty of the circuit court in each county at their first term after the passage of this act to appoint the justices of the peace and overseers of roads to perform the duties as is required by this act and the act to which this is an amendment. *ib. p.* 133. *ib.*

Overseers, &c term of service.

Duties of overseer.

Penalty for neglect.

How recovered.

Private damages

Sec. 8. All justices of the peace and overseers of roads so appointed shall serve for one year until others shall be appointed, and every overseer so appointed who shall refuse or neglect to do their duty as is directed by this act, or shall not keep the roads and bridges over small water courses, and causeways and in swamps and low lands in repair or let them remain uncleared or out of repair for and during the space of thirty days unless hindered by extreme bad weather such overseer shall forfeit for every such offence the sum of ten dollars* to be recovered by indictment or presentment before any court proper to try the same, one half for the use of any person or persons prosecuting for the same, and the other half for the use of the county. And shall nevertheless be subject to an action for damages at the suit of any person injured by such refusal or neglect. And it shall be the duty of the grand jury of the county from time to time to make presentments or prefer indictments to the several courts of all such roads as they shall find out of repair. *ib.* 1813. *p.* 76. *pass'd* 18. *Jan. in force* 1. *March,* 1814.

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* See post sec. 17.

G jury to present for neglects.

Sec. 9. Whenever the said roads, small bridges and causeways shall require repairing the overseer shall give at least two days notice, to all persons subject to work within their respective road divisions or districts, of the time and place of attendance with such tools as he may deem necessary. And if any person subject to work as aforesaid shall fail to attend agreeable to such notice, together with all slaves, sons, wards and apprentices owned by them or under them or under their care or management they shall be subject to the following fines to wit:† for the non attendance of every free person the sum of one dollar per day and for every slave, son, ward and apprentice the sum of one dollar per day to be recovered on the goods and chattels of such white person failing to work on any road and on the goods and chattels of the owner or possessor of such slave or slaves, and on the goods and chattels of the father, master or guardian of any white person under the age of twenty one years who shall fail to work on any road as aforesaid by warrant of distress in an action of debt before any justice of the peace, on the name of the overseer who shall nevertheless be a competent witness against such defaulter or defaulters; unless the party making such default shall within ten days thereafter make such excuse on oath as may be deemed satisfactory to the overseer: *And provided also,* That no justice of the peace shall be authorised to issue a warrant as aforesaid without satisfactory proof being first made that the notice required by this act was duly served. *ib. p.* 76-7. *ib.*

Wanting repairs.

Overseers to give notice, &c.

Fine for non attendance.

By whom paid.

To be recovered by warrant from J P

Unless excuse be made.

Notice must be proved.

Sec. 10. If any person shall neglect or refuse to work on any public road or highway agreeable to the provisions of the act to which this is an amendment,‡ such person or persons so neglecting or refusing shall forfeit and pay the sum of two dollars for each day such person or persons shall refuse or neglect to work as aforesaid to be recovered in the manner provided by

Penalty for neglecting or refusing to work.

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† *Vide post sect.* 10, *for refusing to work.*

‡ *All under this head.*

the above recited act.* *ib.* 1816. *p.* 135. *pass'd* 1. *Feb.* 1817.

Commutation of labor.

Sec. 11. The overseers shall be and they are hereby authorised to commute personal labour for waggons, teams, or any necessary implements of labour which may be required on the road. *ib. p.* 133. *ib.*

Obstructions how removed.

Sec. 12. When any person or persons shall have made any fence or laid any other obstruction across or in any public road heretofore laid out, without the leave of any court having cognizance thereof, it shall be the duty of the overseer of the road in which the same may be, as soon as may be after he has notice or knowledge of such obstruction, to cause such obstructions to be removed, and the road restored to its original situation, unless in the opinion of such overseer the road now used is equally convenient with the original one.

Removal of roads how obtained.

And when any person shall be desirous of removing any road for private convenience such person shall petition any one or more of the judges of the court of common pleas [circuit-court] for leave to remove the same, and on such petition it shall be the duty of said judge or judges then to issue an order directed to three free holders of the neighbourhood who being sworn as is by law herein before directed, shall proceed to view the ground over which such removal is intended to be made and if the said free-holders shall report to the next court that such alteration will be equally convenient the court of common pleas [circuit court] may order the same to be made by the person praying the same, which shall be cleared in the same manner as is herein before directed. *ib.* 1813. *p.* 78. *pass'd* 18*th, Jan. in force* 1. *March* 1814.

Viewers to be appointed.

Penalty for making obstructions.

Sec. 13. When any person shall hereafter make any fence or cut any tree or make any other obstructions in or across any public road unless removed within two days such person shall for every such offence pay a fine not exceeding fifteen dollars to be recovered by a warrant under the hand of any justice of the peace to be applied as is herein before directed; and it shall be the duty of the overseer of the road, forthwith, to cause the said obstruction to be removed. *ib. p.* 79. *ib.*

How recovered.

Duty of overseer.

Road signs.

Sec. 14. It shall be the duty of each and every overseer of the public roads aforesaid to put up road signs or directions, painted on boards with capital letters and safely secured on posts or trees, and [at] every conspicuous fork of such public roads within his road division, and such overseers shall receive for each road sign so put up not exceeding the sum of one dollar, and for every and each day he shall superintend the labourers on said road or be actually employed in notifying persons to work on said roads, more than the number of days such overseer is assessed to work on the roads, he shall receive the sum of one dollar per day, to be allowed by the circuit court of the proper county, and paid out of any money which may have been paid into the county treasury for fines or forfeitures incurred under the provisions of this act, or under the provision of the act to which this act is an amendment, not otherwise appropriated. *ib.* 1816. *p.* 131. *pass'd 1st Feb.* 1817.

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* *Ante sec.* 9.

Overseers compensation

Sec. 15. Each justice of the peace who shall be appointed to perform the duties which are required of them by the provisions of the act to which this act is an amendment shall be entitled to and receive one dollar for each and every day they may be employed in the discharge of the aforesaid duties to be paid out of any money in the county treasury not otherwise appropriated, to be allowed by the circuit court of the county in which such services may have been rendered. And if any justice of the peace who may be appointed to perform the duties aforesaid shall neglect to perform said duties such justice shall forfeit and pay a sum not exceeding fifty dollars to be recovered on presentment by the grand jury in the circuit court of the proper county. *ib. p.* 130. *ib.*

Compensation of J. P

Penalty for neglect

Sec. 16. Each and every commissioner appointed to view the said public roads shall receive one dollar per day for every and each day he shall be employed in viewing such road or roads as full compensation for their services to be allowed by the circuit court of the county in which services may have been rendered; and paid out of any money in the county treasury, not otherwise appropriated. *ib. p.* 131. *ib.*

Compensation of road commissioners.

Sec. 17. If any overseer who may hereafter be appointed under the provisions of the act to which this act is an amendment or if any commissioners who may be appointed as aforesaid to view any road shall fail or neglect to perform the duties required of them by law each and every overseer or commissioner so failing or neglecting shall forfeit and pay a sum not exceeding fif-

Neglect of duty by overseer or commissioner. Penalty ty dollars to be recovered by presentment by the grand jury in the circuit court of the proper county. *ib. p.* 131. *ib.*

Fines and forfeitures how recovered & appropriated.

Sec. 18. All fines and forfeitures which may hereafter be incurred, under the provisions of this act or the provisions of the act to which this act is an amendment shall be paid into the county treasury, and after the payment of the overseer as is provided for by this act shall be and the same is hereby directed to be appropriated to the improvement of the several public roads and highways, in the counties in which the same may have been incurred either by hiring horses, waggons, labourers or otherwise as the overseer of the several road divisions or districts shall deem most adviseable and proper and an order from such overseer shall be a sufficient voucher to the county treasurer for the payment thereof. *ib. p.* 133. *ib.*

ROBBERY.

See Crimes and Misdemeanours, sec. 8.

SABBATH BREAKING.

See Vice & Immorality, sec. 1.

SALT PETRE WORKS.

Sec. 1. Whereas many people of this territory suffer great losses by reason of the neglect of persons manufacturing salt petre.

To be enclosed.

Therefore, Be it enacted by the General Assembly of the Territory of Missouri, That the owners or occupiers of each salt petre works within this territory or that may be hereafter erected within this territory, shall keep the same enclosed so as to prevent cattle and every other kind of stock that may receive injury thereby from having access thereto. And every person owner or occupier of any salt petre works within this territory failing to secure his works from being accessable by cattle or any other kind of stock that may be injured by drinking the salt petre water, shall be liable to the action of the party injured by such neglect for double the value of any cattle or stock of any other kind that may be killed by drinking the same, to be recovered in any court of record having competent jurisdiction to try the same: *Provided however,* That if such owner or occupier of such salt petre works, shall enclose

On failure owner liable for losses occasioned thereby.

In double the value of stock injured.

If the fence be lawful no dasaid works with what shall be deemed a sufficient fence in law and keep the same in repair such owner or occupier shall not be accountable for any trespassing animal receiving injury as aforesaid. *L. M. T. Dec. sess.* 1814. *p.* 38. *pass'd* 2. *Jan.* 1815.

mages to be recovered.

SALVAGE.

Water craft in perishable condition may be secured

Sec. 1. In all cases when any boat, barge, craft, vessel, raft or other property, of any person or persons, shall be lost, wrecked, or adrift, and in a perishable condition upon any river or navigable water course in this territory or bounding on the same, it shall and may be lawful for any person or persons to take up and secure the same in the manner following, that is to say, if it be boats, barges, crafts, vessels or rafts, by fastening and securing the same to the bank of the river or as near thereto as may be at the most convenient and eligible place or mooring on the river nearest the place of taking up the same, or by moving and securing the same as aforesaid, to such other place on the river on which the same may be taken up as may be deemed most convenient, and nearest to the place where the same has been taken up. And if it be articles of merchandize, country produce, or other property other than as aforesaid, either shipped on board of any boat, vessel, or craft, or carried away by the rising of the waters, tempest, or other such accident, the taker or takers up thereof shall secure the same by the best or safest means in his or their power without carrying the same farther from the place of caption than may be necessary for the safe keeping, and security thereof, always having due regard to the nature and quality of the property. *L. M. T. Dec. sess.* 1816. *p.* 32. *pass'd* 23d *Jan.* 1817.

In what manner!

Merchandize, &c in what manner.

To be restored on proof of ownership.

Sec. 2. When any person or persons shall set up a claim as owner or owners to such property so taken up and shall prove his, her or their title to the same by the oath of one or more competent witness or witnesses. or shall produce other satisfactory proof before any justice of the peace of the proper county, it shall be the duty of such taker or takers up to restore the same to such owner or owners, they paying to such taker or takers up a premium for salvage" at the rate of ten per centum upon the value of such baot, barge, vessel, craft or other property, except rafts taken up as afore-

10 per cent salvage.

Exceptions and modifications.

Salvage on rafts of planks and shingles.

Rafts of logs, rails, firewood timber.

Takers up may detain the property until salvage be paid.

said: *Provided however*, That the said premium for salvage shall not in any case except in such as are hereinafter provided for exceed the sum of one hundred dollars, unless the said property shall be valued to a greater sum than one thousand dollars, and it shall be made to appear by the taker or takers up, to the satisfaction of the justice to whom information of the taking up of such property may be given as is hereinafter provided for, that the said taker or takers up are justly entitled to receive a greater or larger premium for his, her or their services so rendered as aforesaid; in which case the owner or owners shall pay to such taker or takers up, such greater or larger premium for salvage as the said justice may order and direct: *Provided also*, That the whole amount of said premium shall not exceed a greater sum than at the rate of ten per centum upon the value of such boat, barge, vessel, craft or other property except rafts so taken up as aforesaid, and any person taking up and securing any raft in manner aforesaid; when the materials which compose the same shall consist of planks or shingles or both, the person taking up and securing, shall be entitled to receive the same salvage, as is by this act allowed to persons for taking up and securing for the owners any boats, barges, vessels, crafts or other property, and when the materials which compose any raft taken up as aforesaid, shall consist of logs, rails, firewood or timber, the person taking up and securing in manner aforesaid, shall be entitled to receive for his trouble the one fourth part of the materials which compose such raft, or the one fourth part of the proceeds arising from the sale of such raft, and if more than five thousand dollars, one hundredth part of the value thereof, and the taker or takers up of such boat, barge, craft, vessel raft or other property, shall be entitled to retain the same against the rightful owner or owners thereof until salvage be paid, or may have and maintain his, her or their action of debt, or on the case against such owner or owners for the amount of salvage due according to the provisions of this act. *ib. p.* 33. *ib.*

Property taken up to be reported to a justice of peace.

Sec. 3. Whenever any such property as aforesaid shall be taken up and secured as aforesaid if the same exceed the value of ten dollars it shall be the duty of taker or takers up thereof forthwith to go before some justice of the peace, of the county in which the same may have been taken up or secured, and inform him thereof and make oath that the said property was wrecked or lost or adrift (as the case may be) without the consent of the owner or owners and in a perishable condition as he, she or they believes or believe and that he, she or they was or were not directly or indirectly instrumental in causing the said property to be wrecked, lost, set adrift or placed in a perishable condition and shall also give in under oath to such justice of the peace an exact account of the special quality and quantities of such property and the time that such property was so taken up by him, her or them as near as may be, and that he she or they, has or have not secreted or disposed of, nor directly or indirectly caused to be secreted or disposed of any part thereof, and shall as soon as practicable not exceed thirty days thereafter, cause to be inserted in some newspaper printed in this territory nearest the place of taking up of such property, if there be any printed in the same, if not, then in some newspaper printed in some one of the nearest states or territories for four weeks successively, a correct and exact account of the time and place when and where the said boat, barge, craft, vessel, raft or other property (as the case may be) was so taken up, and of the description and valuation thereof, and shall also put up at least three advertisements to the same effect, at the most public places in the township where such property may have been taken, within ten days thereafter. And if the said taker or takers up, shall refuse or neglect to give public notice as aforesaid he, she or they shall forfeit all his her or their right to salvage, and moreover shall forfeit and pay to the owner or owners of said property, all such damages as the said owner or owners may sustain in consequence thereof, to be recovered with costs of suit before any court having jurisdiction: *Provided however*, That when the owner or owners shall appear and prove his her or their claim and right to said property according to the provisions of this act within the time above specified, it shall not be deemed necessary for the taker or takers up to give such public notice. And if the amount of the property taken up shall not exceed the sum of five hundred dollars the expenses of publishing the notice in the newspaper shall be allowed to the taker up out of the property thus taken up. And any person taking up and securing any raft in manner aforesaid when the materials which compose the same,

Specially under oath.

Publication.

In default of which taker up loses his claim to salvage, and subjects himself to damages.

Expenses of publication.

Planks and shingles

shall consist of planks or shingles or both, the person taking up and securing shall be entitled to receive the same salvage as is by this act allowed to persons for taking up and securing for the owner any boats, barges, vessels, crafts or other property, and when the materials which compose any raft taken up as aforesaid, shall consist of logs, rails, firewood or timber the person taking up and securing in manner aforesaid shall be entitled to receive for his trouble the one fourth part of the materials which compose such raft, or the one fourth part of the proceeds arising from the sale of such raft. *ib. p. 34. ib.*

Logs, rails, &c.

Of less value than 10 dolls.

Sec. 4. Whenever any person or persons shall take up and secure any such property as aforesaid of less value then ten dollars, he, she or they may retain and dispose of the same to his her or their own use, provided the owner or owners shall not claim the same at any time within one year after the taking up thereof. And when such property shall be of greater value than ten dollars and not exceeding one hundred dollars, and shall be of a perishable nature, it shall be the duty of the justice of the peace to whom an account thereof is given in by warrant under his hand to direct the constable of his township to sell the same at public vendue, giving at least twenty days public notice, by at least three advertisements put up at the most public place in his township, of the time and place of such sale. But the owner or owners thereof on proof of his, her or their ownership before such justice of the peace, may have restitution of his, her or their property at any time before sale is made, on paying the salvage and costs incurred, and after such sales the constable shall return the warrant to said justice of the peace, together with the money resulting from such sale. And it shall then be the duty of the justice of the peace to allow to the taker or takers up, his, her or their salvage according to the provisions of this act, and after paying the costs incurred, to retain the balance in his hands to be paid to the owner or owners of the property sold if he, she or they, do apply for the same, and make proof of his, her or their right at any time within six months from and after the return of the warrant of sale, and if no claimant or claimants should appear within six months, it shall be the duty of the justice of the peace to pay the said money into the county treasury, taking the treasurer's receipt therefor, which receipt shall be

Over $10 and not exceeding 100.

Justice of the peace to allow salvage.

Non appearance of claimant within 6 months.

Subsequent appearance of claimant.

Above value of $100, may be sold by order of courts.

Sheriffs proceedings thereon

When not of a perishable nature may be deposited if under $100.

filed in the office of the circuit court of the proper county, and the owner or owners of any property so sold, may at any time thereafter on bringing satisfactory proof of his, her or their ownership obtain an order from the proper court of the county for the payment thereof to him, her or them, out of the county treasury and in all cases in which property is taken up and secured as aforesaid, when such property shall be above the value of one hundred dollars, the superior and circuit courts of the territory and any judge thereof in vacation, shall have the power of ordering the sale thereof, by an order directed to the sheriff of the proper county for that purpose. And notice of such sale shall be given and the sale in every respect conducted in the same manner as when property is seized on execution, and the sheriff after paying to the taker or takers up, his, her or their salvage according to the provisions of this act and the costs incured, shall retain the money arising therefrom in his own hands until either of the said courts or some judge thereof shall authorise him to pay the same over to the owner. And the sheriff for his services under this act, shall be entitled to the same fees as he is entitled to in other cases. And when such property shall not be of a perishable nature; such justice of the peace shall cause the same to be delivered to such responsible person (if any such person willing to undertake the same, can be found) for safe keeping, taking a bond from such person in the name of the justice of the peace for the use of the owner or owners of such property conditioned for the safe keeping and re-delivery thereof to the owner or owners thereof and if no person or owners shall appear within one year and prove his, her or their ownership in his, her or their own right, or by right, of representation, then such justice of the peace or any other justice of the peace of the same county, shall and may cause the same to be sold and the proceeds to be disposed of as provided in case of perishable property, and the person or persons having safely kept and redelivered such property as aforesaid shall be entitled to a reasonable compensation, not exceeding ten per centum for his, her or their trouble, to be paid and collected by such justice of the peace or the owner or owners of such property, when no responable person can be found to receive, safely keep and re-deliver such property as aforesaid, it shall and may be lawful for such justice of the

Of $100 or more may be kept by shff.

peace to cause the same to be sold and disposed of in the same manner and subject to the same restrictions, as is provided in cases of perishable property. And if such property not parishable shall be of the value of one hundred dollars or upwards, the same shall be taken possession of by the sheriff of the county and be by him kept subject to such order as the said superior or circuit court or any judge thereof shall make in that behalf. And such property shall be liable to the same mode of procedure as in cases where the same shall not exceed in value the sum of one hundred dollars. *ib. p. 37. ib.*

Oaths of takers up

Sec. 5. In no case shall any person be obliged to pay salvage unless the person or persons who may have taken up the same will make oath, that he, she or they, was or were not directly or indirectly intrumental in causing the property to be exposed to loss, and that he she or they have not secreted retained or disposed of, nor directly or indirectly caused to be secreted, retained or disposed of any part thereof, and in case of a refusal to make such oath and to deliver the property, the owner or owners thereof with damages may recover the value thereof by an action of trover and conversion. *ib. p. 40. ib.*

Embezzlement.

Penalty

Sec. 6. If any person or persons shall take, detain, secret, dispose of or embezzle any property wrecked, lost or adrift on any such river or water course as aforesaid, contrary to the true intent and meaning of this act, he or she shall be liable to pay double the value thereof to the party injured, to be recovered by action of debt, or on the case in any court having jurisdiction thereof. *ib. ib. ib.*

Embezzlement by justice of peace.

Sec. 7. If any justice of the peace shall fraudulently, secret, embezzle or dispose of any money or property which may or shall come to his hands under the provisions of this act such justice shall forfeit and pay four fold the value thereof, to be recovered by action of debt or on the case one half to the use of the party injured, and the other for the use of the territory in any court having jurisdiction thereof. *ib. ib. ib.*

Value of property how ascertained.

Sec. 8. In all cases within the provisions of this act where it may be necessary to ascertain the value of any boat, barge, craft, vessel, raft or other property, it shall and may be lawful for any justice of the peace of the proper county on the application of either of the parties concerned, by a warrant under his hand to depute three or more substantial householders of the neighborhood, who being duly sworn thereto shall assess and ascertain the value of such boat, barge, craft, vessel, raft or other property, and return their valuation and be by him returned to the clerk of the circuit to remain in his office as a matter of record together with the warrant to the same justice of the peace which valuation as between the parties litigant shall be final and conclusive. *ib. p.* 41. *ib.*

Property taken up and how recovered.

Sec. 9. When any person or persons, shall make oath before any justice of the peace, that he, she or they has or have lost any property by wreck, the rising of the water, tempest or other such accident, and that he she or they has or have good cause to believe that such property so lost is secreted in possession or custody, of any other person or persons, it shall and may be lawful for such justice of the peace by warrant under his hand to direct the constable of his township to search for and take into possession and charge. the property so secreted, and if the claimant or claimants shall prove his, her or their title to the same, in the manner herein before mentioned then it shall be the duty of such constable to deliver the said property to the claimant or claimants so proving his, her or their right, he, she or they paying the fees allowed by law for similar services. *ib. ib. ib.*

Salvage may be paid in kind.

Sec. 10. In all cases in which salvage may be demandable, under the provisions of this act, it shall be at the option of the person or persons from whom the same is due to pay the same in kind at its just valuation or in money. *ib. p.* 42. *ib.*

Property floating from a wreck.

15 per cent salvage.

Officers fees.

Sec. 11. In all cases where boats are wrecked and the cargoes found floating either in barrels, hogsheads, bales or otherwise that the party taking up and securing such cargoes or any parts thereof shall be entitled to fifteen per centum to be paid out of said goods so secured, or out of the proceeds of the sale thereof which fifteen per centum shall be in full compensation to the party who may have taken up the same for his, her or their services and the justices of the peace and constables shall be entitled to the same fees for services performed under this act as they are entitled to receive in other cases by law to be paid out of the proceeds of such sales or by the owner of such property, provided that in all cases arising under the provisions of this act allowing salvage to persons for taking up and securing for the owners, any boat, barge, vessel, craft, raft, or other property and such boat, barge, vessel, craft, raft or other property shall be sold agreeable to the provisions of this act, the person to whom salvage is due shall only be entitled to his per centum by this act, allowed for salvage on the amount of the proceeds of such sale, any thing in this act to the contrary notwithstanding. *ib. ib. ib.*

Per cent to be calculated on amount of proceeds.

SECURITIES.

May, in certain cases, require obligee to sue.

Sec. 1. Where any person or persons who now is or hereafter shall become bound as security or securities by bond, bill or note for the payment of money or other property shall apprehend that his or their principal debtor or debtors, is or are likely to become insolvent or to migrate from this territory without previously discharging such bond, bill or note, so that it may be impossible or extremely difficult for such security or securities, or any or all of them, after being compelled to pay the money or other property due by such bond, bill or note, to recover the same back from such principal debtor or debtors, it shall and may be lawful for such security or securities, in every such case provided, that the right to an action shall have accrued on such bond, bill or note, to require by notice in writing, of his or their creditors, or his or their assignee or assignees, forthwith to put the bond, bill or note by which he she or they may be bound as security or securities as aforesaid, in suit, and unless such creditor or creditors, assignee or assignees, as required to put such bond bill or note in suit shall as speedily thereafter as may be, not exceeding thirty days thereafter commence an action on said bond, bill or note, and proceed with due diligence in the ordinary course of law, to recover judgment for, and by execution make the amount due by such bond, bill or note, the creditor or creditors, assignee or assignees, so failing to comply with the requisitions of such securities, shall thereby forfeit the right which he or they otherwise have to demand and receive of such security or securities, notifying as aforesaid the amount which may be due by such bond, bill or note. *L. M. T. Dec. sess.* 1815. *p.* 13, 14–15. *pass'd* 16*th Jan.* 1816.

By giving notice in writing.

Cr. neglecting to sue within 30 days.

Shall forfeit his claims agt. such security.

The same right extended

Sec. 2. Any security or securities, or in case of his her or their death, then his, her or their heirs, executors or administrators may in like manner and for the same cause, make the same requisitions of the executors or administrators, or assignee or assignees of the creditor or creditors of such security or securities, as it is herein before enacted, may be made by a security or securities of his or their creditor or creditors; and in case of failure of the executors or administrators, assignee or assignees, so to proceed, such requisition as aforesaid being duly made, the security or securities his or their heirs executors or administrators making the same, shall have the same rights and be entitled to the same exemptions from the payment of the debt, that is herein provided for a security or securities when his or their creditor or creditors shall be guilty of a similar failure. *ib. p.* 15. *ib.*

to the heirs, &c. of securities, and agt. the heirs, &c. of the creditors.

Sec. 3. Nothing herein contained shall be so construed as to effect bonds with collateral conditions excepting such part or parts thereof as shall be for the payment of money or other property or for the performance of any covenant or agreement contained in any deed or instrument in writing for the payment of money or other property, or the bonds which have or may be entered into by guardian, executors, administrators or public officers. *L. M. T. Dec. sess.* 1815. *p.* 15.

Bonds with collateral conditions, not affected by this act, except in certain cases

Sec. 4. The rights and remedies of any creditor or creditors against any principal debtor or debtors shall be in no wise effected by this act, any thing herein contained to the contrary or seemingly to the contrary notwithstanding. *ib. p.* 15-16. *ib.*

Rights of crs agt. principal.

Sec. 5. In all cases where judgment hath been or shall hereafter be entered up against any person or persons as security or securities, their heirs, executors or administrators upon any note, bill, bond or obligation. and the amount of such judgment or any part thereof hath been paid or discharged by such security or securities, his her or their heirs executors or administrators it shall and may be lawful for such security or securities his her or their heirs, executors or administrators to obtain judgment by motion, against such principal obligor or obligors, debtor or debtors for the full amount which shall have been paid with interest at the rate of ten per centum per annum, by the security or securities, his her or their heirs executors or administrators, in any court where such judgment may have been entered up against such security or securities his her or their heirs, executors or administrators: *Pro-*

Judg't. against security he may have judg't. against principal.

Party denying himself to be principal, to be tried when.

vided, That if the person against whom the motion is made shall deny being the principal debtor and the other party shall insist thereon the court shall direct a jury to be empanneled instanter to try the fact, and give judgment accordingly immediately unless good cause be shown to continue the same till another term. *ib. p.* 16. *ib.*

Of an insolvent debtor being jointly bound.

Judg't. to be apportioned.

Proviso. Person denying that he is security.

Sec. 6. Where the principal obligor or obligors have or shall hereafter become insolvent, and there are two or more securities jointly bound with the said principal obligor or obligors, in any bond, bill, note or other obligation for the payment of money or other things, and judgment hath been or hereafter shall be obtained against one or more of such securities, it shall and may be lawful for the court before whom such judgment shall or may be obtained upon motion of the party or parties against whom judgment hath been entered up, as securities as aforesaid, to grant judgment and award execution against all and every the obligors and their legal representatives, for their and each of their respective shares and proportion of the said debt and of the damages and costs of the former suit: *Provided,* That if such joint obligor or obligors against whom the motion shall be made, will deny that he or they were security or securities, and the other party shall insist thereon, the court shall direct a jury to be empanneled instanter to ascertain the fact and give judgment accordingly, unless good cause be shown for a continuance to the next term. *ib. p.* 16–17 *ib.*

Shall not confess judgt. &c.

Give collateral security.

Sec. 7. No security or securities, his her or their heirs executors or administrators shall be suffered to confess judgment or suffer judgment to go by default, if his her or their principal or principals, will enter him, her or themselves a defendant or defendants to the suit, if not already a defendant and tender and give the security or securities his, her or their heirs, executors or administrators, other good and sufficient collateral security to be approved of by the court before whom the suit shall be depending. *ib. p.* 17–18. *ib.*

Of officers how discharged of their securityship.

Sec. 8. It shall and may be lawful for any person or persons, his, her, or their heirs, executors or administrators, who now are or hereafter may become security or securities for any clerk of a court, sheriff or any other public officer who holds or may hold any public office in the territory to be relieved and discharged from such securityship in the following manner, to wit: In the case of a clerk of a court, such security or securities shall give to such clerk, at least thirty days notice in writing, notifying him therein, that he or they will not continue longer as his security and requiring him to appear at the next term of the court of which he is clerk, at the time in said notice mentioned, and give other security for the performance of the duties required of him by law. *ib. p.* 21. *ib.*

If clk to be notified in writing.

Sec. 9. The said notice being duly proven to the court shall be entered on the record thereof and such security or securities shall from thenceforth be totally discharged and exonerated from his or their securityship, whereupon the said clerk shall give such other security as shall be approved of by the court and on failing so to do his office shall be vacated and another clerk shall be immediately appointed according to law. *ib. p.* 21-22. *ib.*

Notice being duly proven security to be discharged.

Sec. 10. In all cases of public officer within this territory coming within the purview of this act; it shall and may be lawful for their security or securities to notify them to appear as aforesaid before any court of record in the territory, and on their failing so to do, and giving other security as shall be approved by the court, body politic or person to whom by law, bond and security for the performance of the duties of their offices is directed to be given, their offices shall be vacated, and others appointed in their stead according to law. *ib. p.* 22. *ib.*

All public officers so duly notified shall give other security.

Sec. 11. When any public officer as aforesaid, shall absent himself from this territory for the space of six months successively or so that notice cannot be served on him, the insertion of such notice for three weeks successively in any Gazette published in this territory shall be sufficient. *ib. ib. ib.*

Officer absent how to be notified

Sec. 12. Nothing in this act contained shall be construed to relieve or discharge such security or securities for any damage which may have arisen or may hereafter arise on account of the misfeasance, non-feasance or malfeasance of the public officer or officers for whom they stand bound, prior to the time of their exoneration as aforesaid. *ib. p.* 22. *ib.*

Securities not released from damages, &c

SET-OFF.

See Defalcation, sec. 1.

SHERIFF.

By whom appointed.
Tenure of office.
Oath to be taken.
To give bond.

Sec. 1. There shall be appointed and commissioned by the governor a sheriff in each county in this territory, who shall hold his office for the term of two years, unless sooner removed, who shall before he enters on the duties of his office take the oaths to support the constitution of the United States and faithfully to discharge the duties of his office: and shall give bond to the governor and his successors in office with at least two sufficient sureties to be approved of by the court of common pleas [circuit court] in term time or two judges thereof in vacation, in a penal sum not exceeding fifteen thousand nor less then five thousand dollars, which bond shall be conditioned for the faithful discharge of the duties appertaining to his office of sheriff. *L. M. T. July sess.* 1813. *p.* 17. *pass'd* 29 *July, in force* 1 *Oct.* 1813.

Bond to be recorded.
Where filed.
May be sued on.
Pl'ff liable to costs &c.

Sec. 2. The bond to be given as aforesaid shall be recorded in the office of the recorder in the county at the expence of the sheriff, and the original shall be filed in the office of the clerk of the court of common pleas [circuit court.] A copy of which bond shall be made out by the recorder or the clerk, at the instance and expence of any person or persons applying for the same; and which bond may be sued on from time to time for the use of any person who may think himself, herself or themselves aggrieved: *Provided however,* That the person or persons at whose instance suit shall be commenced as aforesaid shall be liable for the payment of costs as plaintiff in all other cases; And where, in the opinion of the court it may be necessary such person or persons shall be compelled to enter security for costs as in other cases. *ib. p.* 17–18 *ib.*

Powers and duties.
To return recognizance to C.C.
To suppress frays &c.
To serve process

Sec. 3. The duties of each sheriff shall be to keep the peace by causing all offenders against law in his view to enter into recognizances with sureties for keeping the peace, and appearing at the next court of common pleas [circuit court] in the county, and to commit in cases of refusal; and which recognizances shall by the said sheriff be returned and certified before the said court of common pleas [circuit court.] And shall be his duty to quell and suppress all frays, riots, routs and insurrections, and for which end he shall be and is hereby empowered to call to his aid the power of the county; he shall pursue apprehend and commit to jail all felons and traitors. He shall execute all warrants, writs and other process which by law shall appertain to the duties of his office and which shall be directed to him by legal authority. He shall duly attend upon all courts of record at their respective terms or sessions in his county. *ib. p.* 18. *ib.*

Attend courts.

Sec. 4. It shall be the duty of the grand jurors, in the respective counties of this territory, to make presentments of all neglects and omissions of any sheriff; or for making a false return, or neglecting or refusing to make return of any civil or criminal process to him directed, and it shall be the duty of the court before whom the trial is had, upon conviction of any sheriff of any of the above mentioned neglects omissions or offences, to certify the same to the governor of the territory, stating the nature and aggravation of the offence. *L. M. T. Dec. sess.* 1815. *p.* 58. *pass'd* 21. *Jan.* 1816.

Neglects and omissions by sheriff.

SLANDER.

Sec. 1. It shall be and is hereby declared to be actionable to publish maliciously in any manner whatever, that any person has been guilty of fornication or adultery and the defendant may plead the general issue and give the truth of the charge in evidence for justification: *Provided,* That nothing in this act contained shall be so construed as to affect any person for any transaction or thing done or performed previous to the taking effect of the same. *L. M. T. Dec. sess.* 1815, *p.* 41. *pass'd* 20. *Jan. in force* 1. *June,* 1816.

Charging a person with adultery &c.

Deft. may plead gen. issue &c.

Proviso.

SLAVES.

Sec. 1. No slave shall go from the tenements of his master, or other person with whom he lives without a pass, or some letter or token whereby it may appear that he is proceeding by authority from his master, employer or overseer; if he does, it shall be lawful for any person to apprehend and carry him before a justice of the peace, *to be by his order punished with stripes or not in his discretion.** *L. L. T. pt.* 1. *p.* 13. *pass'd* 1. *Oct.* 1804.

Leaving home without permission.

Punished by stripes.

Sec. 2. If any slave shall presume to come, and be upon of any person, whatsoever without leave in writing from his or her owner or overseer, not being sent upon lawful business, it shall be lawful for the owner or overseer of such plantation, to give or order such slave

Coming on any plantation &c.

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* *See post sec.* 28.

Punished by stripes.

ten lashes on his or her bare back for every such offence. *ib. ib. ib.*

Not to keep gun &c.

Arms and ammunition may be seized.

Slave punished by stripes.

Sec. 3. No slave or mulatto whatsoever, shall keep or carry a gun, powder, shot, club or other weapon whatsoever, offensive or defensive; but all and every gun weapon and ammunition found in the possession or custody of any negro or mulatto, may be seized by any person and upon due proof made before any justice of the peace of the district [county] where such seizure shall be, shall by his order be forfeited to the seizor, for his own use, and moreover, every such offender shall have and receive by order of such justice any number of lashes not exceeding thirty nine on his or her bare back well laid on for every such offence. *ib. p.* 13–14. *ib.*

Free negro may carry one gun, &c.

And all negro's, &c. may carry guns in certain cases.

Sec. 4. Every free negro or mulatto, being a housekeeper may be permitted to keep one gun, powder and shot; and all negroes or mulattoes bond or free, living at any frontier plantation, may be permitted to keep and use guns, powder shot and weapons, offensive and defensive, by license from a justice of the peace of the district [county] wherein such plantation lies, to be obtained upon the application of free negroes or mulattoes, or of the owners of such as are slaves. *L. L. T. pt.* 1. *p.* 14.

Riots, routs, &c.

Punished by stripes.

Sec. 5. All riots, routs, unlawful assemblies and seditious speeches by a slave or slaves, shall be punished with stripes, at the discretion of a justice of the peace and he who will may apprehend and carry him, her or them before such justice. *ib. p.* 15. *ib.*

Meetings of slaves.

Persons permitting any slaves to remain, &c.

Or at any time not more than 5.

Sec. 6. To prevent the inconvenience arising from the meetings of slaves, if any master mistress or overseer of a family shall knowingly permit or suffer any slave not belonging to him or her, to be and remain on his or her plantation, above four hours at any one time, without leave of the owner or overseer of such slave, he or she so permitting shall forfeit and pay three dollars for every such offence and every owner or overseer of a plantation, who shall so permit or suffer more than five negroes or slaves, other than his or her own, to be and remain upon his or her plantation, or quarter at any other time, shall forfeit and pay one dollar for each negro or slave above that number, which said several forfeitures shall be to the informer, and be recoverable before any justice of the peace of the district [county,] with costs, where such offence shall be committed: *Provided always*, That nothing herein contained; shall be construed to prohibit the negroes or slaves of one and the same owner, though seated at different quarters, from meeting with their owner or overseers leave, upon any plantation to such owner belonging, nor to restrain the meeting of slaves on their owners or overseers business at any public mill, so as such meeting be not in the night time, nor on a Sunday, nor to prohibit their meeting on any other lawful occasion by license in writing from their owner or overseer, nor their going to church and attending divine service on the Lords day or any other day of public worship. *ib. p.* 15, 16. *ib.*

Persons may permit their own slaves to meet, &c.

Sec. 7. If any white person free negroe or mulatto, shall at any time be found in company with slaves at any unlawful meeting, or shall harbour or entertain, any slave without the consent of his or her owner, such person being thereof convicted before any justice of the peace, shall forfeit and pay three dollars for every such offence to the informer recoverable with costs, before such justice; or on failure of present payment, shall receive on his or her bare back, twenty lashes well laid on, by order of the justice before whom such conviction shall be made. *ib. p.* 16. *ib.*

Free persons found in company with slaves, fined, and

On failure of payment whipped.

Sec. 8. Every justice of the peace, upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend such persons so met or assembled, and cause them to be brought before himself or any other justice of the district [county] to be dealt with as this act directs; and every justice failing herein shall forfeit and pay eight dollars for every such failure; and every sheriff or their officer who shall fail upon knowledge or information of such meeting to endeavour to suppress the same and bring offenders before some justice of the peace to receive due punishment shall be liable to the like penalty of eight dollars, both which penalties shall be to the informer, and recoverable with costs in any district [county] court by action of debt and every under sheriff, sergeant or constable who upon knowledge or information of such meeting, shall fail to perform his duty in suppressing the same, and apprehending the persons so assembled, shall forfeit and pay four dollars for every such failure, to the informer recoverable with costs before any justice of the district [county.] *ib. p.* 16–17. *ib.*

Duty of J. P.

J. P. neglecting duty fined.

Duty of shff. and other officers.

Penalty for neglect.

How recovered.

Runaways and outlying slaves.

Sec. 9. Whereas many times slaves run away and lie hid and lurking in swamps woods and other obscure places, killing hogs and committing other injuries to the inhabitants of this district [Territory,] in all such cases, upon intelligence given of two or more slaves lying out as aforesaid, any two justices of the peace of the district [county] wherein the slaves are supposed to lurk or do mischief, shall be and are empowed and required, by warrant reciting their names and owners names, if known, to direct the sheriff of the said district [county] to take such power with him, as he shall think fit and necessary for the effectual apprehending such out lying slave or slaves and go in search of them, and upon their being apprehended to commit them to the jail of his district [county] for further trial.* *ib. p.* 18. *ib.*

Two J. P. may issue warrant.

Directed to sheriff.

Slaves, consulting, conspiring, &c. deemed guilty of felony.

Sec. 10. If any negro or other slave shall at any time consult, advise or conspire to rebel or make insurrection, or shall plot or conspire the murder of any person or persons whatsoever, every such consulting, plotting or conspiring shall be adjudged and deemed felony and the slave or slaves convicted thereof shall suffer death and be utterly excluded all benefit of clergy. *ib. p.* 18–19. *ib.*

And shall suffer death.

Slaves preparing medicine, &c. to suffer death.

Sec. 11. If any negro or other slave, shall prepare, exhibit or administer any medicine, whatsoever, he or she so offending shall be judged guilty of felony and suffer death without benefit of clergy: *Provided always,* That if it shall appear to the court before whom such slave shall be tried that the medicine was not prepared exhibited or administered, with an ill intent, nor attended with any bad consequences such slave shall be acquitted; *Provided also,* That nothing herein contained shall be construed, to extend to any slave or slaves administering medicine by his or her master's or mistress's order in his or her family or the family of another with the mutual consent of the owner of such slave and the master or mistress of such family. *ib. p.* 19. *ib.*

Unless, &c.

And unless by permission.

Persons dealing with slaves.

Sec. 12. No person whatsoever shall buy sell or receive of, to or from a slave any commodity whatsoever, without the leave or consent of the master, owner or overseer of such slave. And if any person shall presume to deal with any slave without such leave or

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* *See post sec* 29.

How punished.

consent, he or she so offending shall forfeit and pay to the master or owner of such slave four times the value of the thing so bought sold or received, to be recovered with costs by action upon the case in any court of record within this district [Territory,] and shall also forfeit and pay the further sum of twenty dollars to any person who will sue for the same, to be recovered with costs, in any court within this district having jurisdiction; or receive on his or her bare back thirty nine lashes well laid on; but shall nevertheless be liable to pay the costs of the suit. *ib p.* 17. *ib.*

Masters, &c. suffering slave to go at large and trade to be fined.

Fine how recovered and appropriated.

Sec. 13. If any master or owner of a slave shall license such slave to go at large, and trade as a free man, the master or owner shall forfeit and pay the sum of thirty dollars for the use of the poor of such district [county] where such slave shall be found going at large, and trading as aforesaid, to be recovered by the overseers of the poor by action of debt in any court of record within this district [Territory,] and if after conviction such slave shall be found going at large and trading, the master or owner shall again be liable to the like penalty to be recovered as aforesaid, and so as often after conviction as such slave shall be found going at large and trading. *ib. p.* 19-20. *ib.*

Slave going at large or hire himself.

To be apprehended.

Committed.

And sold.

Sec. 14. If any person shall permit or suffer his or her slave to go at large and hire him or herself out, it shall be lawful for any person to apprehend and carry such slave before any justice of the peace in the district [county] where apprehended, and if it shall appear to the justice that such slave come within the purview of this act, he shall order him or her to the jail of the district [county] there to be safely kept until the next court, when, if it shall be made appear to the court that the slave so ordered to jail hath been permitted or suffered to hire him or herself out, contrary to the meaning of this act, it shall be lawful for the court and they are hereby required to order the sheriff or other officer of the district [county,] notice being given by the sheriff or other officer at the court house door at least twenty days before the sale, to sell and dispose of every such slave for ready money. *ib. p.* 20. *ib.*

Money arising under last section how disposed of.

Sec. 15. Twenty five per centum upon the amount of the sale of every slave so going at large, or hiring out himself or herself, shall be applied by the court ordering such sale towards lessening the county levy; and the residue shall be paid by the sheriff or other officer, after deducting five per centum for his trouble, and the jailor's fees to the owner of such slave. *ib. p.* 20–21. *ib.*

Kidnapping.
How punished.

Sec. 16. If any person shall hereafter be guilty of stealing or selling any free person for a slave, knowing the said person so sold to be free, and thereof shall be lawfully convicted, the person so convicted, shall suffer death without benefit of clergy. *ib. p.* 21. *ib.*

Stealing slave.

Sec. 17. If any person or persons shall steal any negro or mulatto whatsoever, out of, or from the possession of the owner or overseer of such slave, the person or persons so offending shall be and are hereby declared felons, and shall suffer death without benefit of clergy. *ib. ib. ib.*

Master of vessel carrying away slave. &c. without permission.
Fine
How applied.
How recovered.
Private action.

Sec. 18. No master of any ship or any other vessel, shall transport or carry any servant whatsoever or any negro or mulatto, or other slave, out of this district [Territory] without the consent or permission of the person or persons to whom such servant or slave doth of right belong, upon penalty of forfeiting and paying one hundred and fifty dollars for every servant or slave transported or carried hence contrary to this act, one moity to the district [county] and the other moity to the owner of such servant or slave, to be recovered with costs, by action of debt or information in any court of record in this district [Territory,] and moreover such master shall be liable to the suit of the party grieved, at the common law for his or her damages. *ib. p.* 25–6. *ib.*

Master of vessel, &c.
May be held to bail

Sec. 19. In any action which shall be brought against the master of any ship or vessel under this act, the court wherein the same shall be depending may rule the defendant to give special bail, if they see cause, and shall not allow him to plead in bar or give in evidence, any act or statute of limitation any former or other law to the contrary notwithstanding. *ib. p.* 26. *ib.*

Slaves declared to be personal estate.

Sec. 20. All negroes and mulatto slaves in all courts of judicature within this district [Territory] shall be held taken and adjudged to be personal estate. *ib, p.* 23. *ib.*

May be emancipated by will or other writing.

Sec. 21. It shall be lawful for any person by his or her last will and testament or any other instrument in writing, under his or her hand and seal, attested and proved in the district [circuit] court by two witnesses, or acknowledged by the party in the court of the district [county] where he or she resides, to emancipate and set free his or her slave, or any of them, who shall thereupon be fully and entirely discharged from the performance of any contract, entered into during servitude, and enjoy as full freedom as if they had been particularly named and freed by this act: *Provided always,* That all slaves so emancipated shall be liable to be taken by execution to satisfy any debt contracted by the person emancipating them, before such emancipation is made: *Provided also,* That all slaves so set free not being in the judgment of the court of sound mind and body, or being above the age of forty five years, or being males under the age of twenty one, or females under the age of eighteen years, shall be respectively supported and maintained by the person so liberating them or by his or her estate; and upon neglect or refusal so to do, the court of the district [county] where such neglect or refusal may be, is hereby empowered and required, upon application to them made, to order the sheriff or other officer, to destrain and sell so much of the persons estate, as shall be sufficient for that purpose: *And provided also,* That every person by written instrument in his life time, or if by last will and testament, executors of every person freeing any slave shall cause to be delivered to him or her, a copy of the instrument of emancipation, attested by the clerk of the court of the district [county,] who shall be paid therefor by the person emancipating eighty three cents, to be collected in the manner of other clerks fees; every person neglecting or refusing to deliver to any slave by him or her set free, such copy shall forfeit and pay thirty dollars; to be recovered with costs in any court of record, one half thereof to the person suing for the same, and the other to the person to whom such copy ought to have been delivered. *ib. p.* 21–2. *ib.*

Emancipated slaves liable, &c.

Not being of sound mind and body,

Or over or under certain ages.

To be supported by master.

To be be levied on his estate.

Proviso.

Emancipated to have a copy, &c.

Clerks fees.

Penalty for refusing copy.

How recovered, &c.

Sec. 22. Saving nevertheless to all and every person or persons, bodies politic or corporate, and their heirs and successors, other than the person or persons claiming under those so emancipating their slaves all such right and title as they, or any of them could or might claim, if this act had never been made. *ib. p.* 23. *ib.*

Rights of other persons saved.

Sec. 23. It shall be lawful for any justice of the peace to commit to the jail of his district [county,] any emancipated slave travelling out of the district [county] of his residence, without a copy of the instrument of his

Emancipated travelling, &c.

To be committed to prison by J. P.

or her emancipation. there to remain until such copy is produced and the jailors fees paid. *ib. p.* 22–3. *ib.*

Emancipated failing to pay taxes.

To be hired out

Sec. 24. In case any slave so liberated, shall neglect in any one year to pay all taxes and levies imposed or to be imposed by law, the court of the district [county] shall order the sheriff or serjeant to hire out him or her for so long time as will raise the taxes and levies, provided sufficient distress cannot be made upon his or her estate. *ib. p.* 23. *ib.*

Gift of slaves how to be made.

Sec. 25. No gift or gifts of any slave or slaves shall be good or sufficient to pass any estate in such slave or slaves, to any person or persons whatever, unless the same be made by will duly proved and recorded, or by deed in writing to be proved by two witnesses at the least, or acknowledged by the donor and recorded in the district [circuit] court where one of the parties lives, within eight months after the date of such deed or writing. *ib. p.* 24–5. *ib.*

Exception.

Sec. 26. This act shall be construed to extend, only to gifts of slaves whereof the donors have, notwithstanding such gifts, remained in possession, and not gifts of such slaves as have at any time come into the actual possession of, and have remained with the donee or some person claiming under such donee. *ib. p.* 25. *ib.*

Saving to bona fide purchasers and cr, &c.

Sec. 27. *Provided always*, That nothing in this act contained shall be construed to alter any adjudication heretofore made, nor to effect the interest of any *bona fide* purchaser for a valuable consideration, or creditor of the donor before the donee hath been at least three years in possession of such slave or slaves under such gift. *ib. ib. ib.*

Slaves travelling without written pass.

Carried before a justice.

Sec. 28. If any person or persons shall take up or apprehend any slave or slaves, travelling at large from his, her or their owner or owners overseer or employer's premises without a token or written pass expressive of his her or their owner, owners, overseer or overseers or employers permission the person so taking up and apprehending such slave or slaves shall immediately take him her or them before some justice of the peace of the township in which such slave or slaves are taken up, if there be a justice of the peace in such township, but if there be no justice of the peace in such township, then before some justice of the peace residing in any township in the county where such slave or slaves are taken up, and the said justice before whom such slave or slaves may be taken up, shall immediately proceed to notify the owner, owners, overseers or employers of such slave or slaves, having been brought before him upon a charge of their travelling at large without a proper pass or token, which notification may be served by any sheriff, constable or other person to whom the same may be directed by such justice of the peace who shall have the same fees for their services as are allowed by law for serving a summons in any civil case, issued by a justice of the peace, to be paid by such owner, employer or overseer of any such slave or slaves and it shall be the duty of such justice of the peace to enter up a judgment against such owner or owners, overseer or employer and if he or they refuse to pay the same may issue execution for the same as in ordinary cases and if the said owner, owners, overseer or employers are not resident in the county where such slave or slaves are taken up as aforesaid, the said taker or takers up shall cause a publication to be inserted in some newspaper printed in this territory and continued therein for ninety days stating the name or names of such slave or slaves, and the name or names if known of the owner or owners thereof, who shall be bound to pay for such insertion: *Provided always,* That if the owner overseer or employer of any slave or slaves who shall or may be taken up under this act shall appear before the justice of the peace before whom he, she or they may be taken either by him, her or themselves or qualified agent within ten days after being notified thereof and make it appear to such justice of the peace that the slave or slaves so taken up or apprehended were at the time they were taken up going about and doing the ordinary business of his, her or their owner, employer or overseer, and the said taker up shall keep the said slave or slaves, or such slave or slaves may be by order of such justice committed to the jail of the county until the time appointed by such justice for the owner or owners, overseer, or employer to appear before him the said justice shall thereupon discharge such slave or slaves, the owner, employer or overseer first paying the expenses which may have accrued for taking up such slave or slaves.

Owner notified.

Notice how served.

Fees.

In case of non resident owners.

Publication.

Committed to jail in certain cases.

Sec. 29. Any person who shall apprehend and lodge in any jail within this territory or deliver to his, her or their owner or owners, overseer or employer, any runaway slave or slaves shall be entitled to demand

Fees for taking up runaways.

and receive of and from such owner, overseer or employer the sum of five dollars, together with the just and reasonable expenses of taking up and securing such slave or slaves to be recovered before any justice of the peace: *Provided however,* That in any case where a reward shall be offered for the taking up any such runaway slave or slaves, amounting to the sum of ten dollars it shall be taken and considered to be in lieu of the reward by this act directed to be paid, and whenever any slave or slaves shall be committed to prison under the provisions of this act the owner or owners employer or overseer, shall pay all lawful expenses, and if after the notification published in pursuance of the first section of this act, no person shall appear at the next circuit court of the county and prove his, her or their property in such slave or slaves. It shall be the duty of the sheriff of the county upon an order of the circuit court of said county to that effect, to sell such slave or slaves as property is sold on execution to the highest bidder for ready money, and such sale shall vest in the purchaser or purchasers, the whole title in such slave or slaves in as full and ample a manner as a sale made by the owner could lawfully do. And the sheriff and other officers shall be entitled to the same fees on such sale as he or they would be entitled to in other cases on execution, and after deducting the costs and charges of such sale and of keeping such slave or slaves the surplus if any shall be deposited in the county treasury for the owner or owners of such slave or slaves who may establish his or her ownership and right to such surplus before any court of record in this territory.

When runaway slaves may be sold.

SMALL DEBTS.

Debts not exceeding $90, to be recovered before J. P.

How to proceed.

Sec. 1. If any shall have a demand against another upon bond, bill, note, book account, promise or for work or labour done, goods, wares, merchandize or other property sold and delivered, and for rent due, which demand or sum shall not exceed the sum of ninety dollars,* such person may make application to any justice of the peace in the township where the defendant resides† for writ of summons, against such defendant, which writ of summons as near as circumstances will admit shall be in the form following to wit:

**Vide post sec.* 4–5.

†*Vide post sec.* 33, *and justice of the peace sec* 2.

Form of summons.

To the constable of township, in the county of greeting: summon C. D. to appear before me a justice of the peace on the day of at the dwelling house of E. F. (or at the dwelling house as the case may be) between my hours of ten in the forenoon and three o'clock in the afternoon of the said day, to answer unto A. B. in an action on (bond, bill, note, book account or promise as the case may be) given under my hand this day of A. D. G. H. justice of the peace. The return day of the summons shall not be more than thirty days nor less than eight days after the date of the same, of which day and place of hearing the plaintiff or his agent shall be notified by the justice. And the service on the defendant shall be by reading the original summons in the hearing of the defendant, or by leaving a copy of the same at his dwelling house or usual place of abode in the presence of one or more of his family or neighbours at least six days before the time of hearing. *L. M. T. Dec. sess.* 1813. *p.* 38–39. *pass'd* 11 *Jan. in force* 1 *May* 1814.

Time between date and return.

Service.

How.

When.

Sec. 2. The several justices of the peace in this territory shall make all summonses returnable before them once a month and shall appoint one day in each month which day shall be named in each summons by them issued for the hearing and determining all matters in controversy between plaintiff and defendant and the said justices shall not hear or determine any matter in controversy where the suit shall be instituted by summons as aforesaid on any other day, except it be by consent of parties or unless the justice shall adjourn for want of time to try the same on the day appointed in the summons. *ib. p.* 39. *ib.*

Return day once in each month.

When the trial of causes shall be had.

Sec. 3. If the plaintiff or his agent make oath or affirmation that he has reason to believe that the defendant is about to abscond or move out of the township and that he is in danger of losing his debt, in such case it shall be the duty on the application of the plaintiff or his agent to grant a warrant in the following form to wit: To the constable of the township of in the county of greeting; Take C. D. and bring him forthwith before me a justice of the peace to answer A. B. in an action on bond, bill, note promise or book account, or rent due as the case may be, given under my hand, &c. (as in the case of a summons.) *ib. p.* 39–40. *ib.*

Absconding debtors.

Form of warrant.

Sec. 4. It shall be the duty of every justice of the

Deft. residing

out of township.

Proviso.

peace, on application of any person, to issue process against any person residing out of his township, in all matters cognizable before a justice of the peace: *Provided,* the cause of action did arise within the township where the said justice resides, and *Provided,* the defendant be found within such township, and the defendant against whom such writ shall be instituted as aforesaid shall not be held to bail. *ib. p.* 56. *ib.*

If there be no J. P. &c.

Process, &c. to whom directed.

Sec. 5. In all cases where there shall not be a justice of the peace, residing in any township in any county in this territory or where any justice, if but one, or justices if more than one, shall be interested in any suit or action made cognizable by the said act,* before a justice of the peace it shall be lawful for any person or persons, to apply for and obtain a warrant or summons, as the case may be; from any justice of the peace, of an adjoining township, in the county, and it shall be the duty of such justice to grant and issue the same accordingly, and the said justice is hereby authorised and empowered to hear and determine the said suit or action, give judgment and issue execution thereon in the same manner as if such defendant or defendants were residents in his proper township, which warrant or summons and execution shall be directed to the constable of the township in which such justice resides, who is hereby required to execute the same; and if such constable shall neglect or refuse so to do, he shall be liable to the same penalties; and the same proceedings may be had against him, as are provided in the above mentioned act to which this is an amendment.† *ib.* 1815. *p.* 33–34. *pass'd* 20*th Jan.* 1816.

J. P. to keep a docket.

How disposed of in case of removal.

Sec. 6. Every justice of the peace shall keep a docket in which he shall make fair and accurate entries of all suits and actions instituted before him, with his proceedings thereon, and when any justice of the peace shall remove out of the county in which he shall be appointed, it shall be his duty to deliver to the clerk of the county [circuit] court of the same county, at least one month before his removal, such docket with all his files belonging to his office as a justice of the peace, and on failure thereof, shall, for every months neglect, after one month as aforesaid, forfeit and pay to the treasurer of the county in which such justice shall have been appointed, the sum of ten dollars, to be recovered with

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**Ante sec.* 1, *and justice of the peace sec.* 2.

†*Post sec.* 8.

costs by action of debt founded on this statute. And when any justice of the peace shall die the executor or administrator of such justice, shall, within one month after taking out letters of administration or testamentary of such deceased's, estate, deliver to the clerk of the county as aforesaid the docket and files of such justice and in default thereof shall forfeit as aforesaid, to be recovered and applied as aforesaid. And attested copies of the files and entries made by the clerk with whom they shall be lodged as aforesaid, shall be as valid to all intents and purposes, as though the same had been made by such justice in his life time. *ib.* 1813. *p.* 57–58. *pass'd.* 18*th.* *Jan. in force* 1*st.* *May.* 1814.

In case of death.

Copy to be evidence.

Sec. 7. If it shall be made to appear to any justice of the peace that a writ of summons or warrant or any execution by him issued may fail of service, for want of a proper officer seasonably to be had, such justice is hereby empowered to deputize any suitable person to serve and return the same by inserting on the back of such writ and signing the words following to wit, At the risk and request of the plaintiff, I authorise G. H. to serve and return this writ—signed E. F. justice of the peace; and the person so authorised shall have the power of the person to whom the writ is directed, in the service and return of such writ, and shall be sworn to the truth of the return by him made. *ib. p.* 42. *ib.*

J. P. may deputize persons to serve process.

Form.

Sec. 8. If any constable shall fail to serve any writ or precept to him directed, and make due return of the same, or shall make a false return, every such constable offending shall forfeit and pay the sum of ten dollars to the party injured, and all damages the party may sustain in consequence of such neglect, to be recovered before any justice of the peace in the township where such constable shall reside, upon an action of debt founded on this statute. *ib. p.* 47. *ib.*

Constable failing to serve process.

Penalty.

Sec. 9. If on the return day of the summons, the defendant neglects or refuses to appear as he was commanded by the summons and the plaintiffs demand is founded on a note or other instrument of writing signed by the defendant, and it shall appear by the return of the summons, signed by the constable that the same was served on the defendant in manner as herein before directed it shall and may be lawful for the justice to give judgment by default for the amount that may appear to be due on such instrument of writing together with costs and to issue execution for the same; and in

Deff't not appearing.

Judg't by default

If pl'fs. claim be on promise or account.

case the plaintiffs demand is founded on promise or book account the justice may go into the examination of witnesses to substantiate plaintiffs demand, and the plaintiff shall recover no more than he can actually prove is due him from the defendant, and it is hereby made the the duty of the justice to enter judgment therefor and issue execution accordingly. And if the plaintiff does not appear on the day appointed for trial, either in person or by agent, to substantiate his demand, the justice shall then proceed to give judgment against him by non suit for the costs of suit: *Provided,* That every justice of the peace shall have descretionary power, to grant a new trial in all matters cognizable before him, and open judgment of non suit, or judgment by default, at any time after the rendition of said judgment, upon the application of the party injured or his agent, giving due notice to the opposite party of the time and place of hearing, upon such conditions and regulations as he shall think fit and reasonable and all proceedings shall be had therein, the same as though no judgment had been rendered provided such application is made before the issuing execution upon such judgments. *ib.* 1813. *p.* 45–46. *ib.*

Pl'ff not appearing to be non suited.

New trial.

Open judg't. of non suit or default.

Proceedings to be regulated by J. P.

J. P. may adjourn a cause at discretion, &c.

Sec. 10. Every justice of the peace shall have power to adjourn the trial of any action brought before him to such further time as he may think proper not exceeding one month, and upon affidavit of either party or their agents that the testimony of a material witness who resides out of the county or at a greater distance than twenty miles from the place of trial or from infirmity of body or other causes cannot be obtained personally, the cause shall be posponed to a day certain, within such reasonable time as the distance of the witness, or the season of the year may make it necessary to obtain the deposition of such witness, and whenever a case is posponed at the instance of the defendant and the original process has been a warrant. such defendant shall enter into recognizance, for a sum sufficient to cover the demand and costs, with one sufficient surety, for his appearance on the day appointed for the trial of the cause. And whenever a rule for taking the deposition of a witness shall be applied for, the party applying shall give notice to the adverse party of the time and place of taking the same, at least ten days before the taking said deposition, and the rule to take such depositions, being certified by the

Where process has been warrant de'ft. to give bail.

justice granting the same, shall be sufficient authority to any justice of the peace of the territory of the United States or their territories, to take the depositions of such witness or witnesses as may be named in said rule, and the said testimony so taken shall be lawful evidence, on the trial before such justice or jury as the case may be. *ib. p.* 47–8–9. *ib.*

Witness failing to attend, fined.

Unless, &c.

Attachments

Sec. 11. If any person, after being duly subpœned as a witness,* in any cause cognizable before a justice of the peace, shall neglect or refuse to attend at the time and place in subpœna mentioned, he or she so neglecting or refusing may be fined in any sum not exceeding three dollars, to the use of the party on whose behalf such witness was so subpœned, for which fine with costs, the said justice shall issue execution against said witness, unless such witness shall within thirty days, after such fine is imposed, render a reasonable excuse to such justice for said default: *Provided,* That no witness shall be fined for non attendance unless the subpœna shall have been served, at least four days before the trial, where the witness resides within thirty miles and one day for every twenty miles over thirty: and the justice of the peace may issue attachments for any witness who fails to attend after being duly subpœned and the witness against whom such attachment shall issue, shall pay the costs thereof, unless he gives a satisfactory cause of excuse to the justice of the peace. *ib.* 1815. *p.* 34–35. *pass'd 20th Jan.* 1816.

If parties appear: proceedings

If demand do not exceed $10.

If demand exceed ten dollars.

Jury.

Sec. 12. If the parties appear before the justice, either in person or by agent, the justice shall proceed to hear the proof and allegations and if the sum demanded shall not exceed the sum of ten dollars shall give judgment according to right and justice, which judgment shall be final. But if the sum demanded exceed ten dollars either party shall have a right upon application therefor, to a trial by jury, which jury shall consist of six good and lawful free white male persons of the age of twenty one years and upwards having the qualifications to serve as jurors in the court of common pleas [circuit court] and the parties may mutually agree on said jury. But upon the neglect or refusal of either party the justice shall write the names of eighteen respectable persons qualified to be jurors as aforesaid who are in no wise related to the parties, and require each party, to strike out the names of six

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*How subpœnas for witnesses are to be issued, see justice of the peace sec. 3

Jury to be sworn.

Verdict to be rendered.

Jurors fees.

If demand do not exceed $10.

Jury summoned.

Failing to attend.

To be fined.

Fine how applied.

How recovered.

Within what time to be sued for.

Vacancy in jury how supplied.

persons, and upon the neglect or refusal of either party to strike out as aforesaid, the justice six names for each party so refusing and the remaining six shall be the jury who shall be sworn or affirmed well and truly to try all matters in dispute between the parties and a verdict return to the justice, who shall thereupon enter up judgment therefor with costs and shall allow each of the jury twenty five cents for his services, which said judgment so had and obtained when the demand in question shall not exceed the sum of twenty dollars shall be final and conclusive on both parties without further appeal and it shall be the duty of the justice to issue his summons to the constable of the township or some other fit person to summons the six persons named as aforesaid, to meet forthwith before said justice or at such time and place as the justice shall appoint and every person summoned as aforesaid who shall neglect or refuse to attend as commanded in said summons (unless prevented by sickness or some unavoidable accident) shall forfeit and pay the sum of four dollars to the supervisor [overseer] of roads to be by him applied in repairing the public highways in the township where such person or persons shall reside, which fine shall be recovered before such justice of the peace on complaint of the party injured by an action of debt founded on this statute; *Provided*, That said action be brought within thirty days after such neglect or refusal And where it shall so happen that any of the six jurors appointed as aforesaid cannot attend and the parties will not agree on a person or persons to fill such vacancy, the justice shall proceed to write the names of three times the number of such deficiency, and upon the refusal of either party to strike out one third part of the names thus written, the justice shall proceed to strike out as aforesaid and shall summon the remaining persons in manner before directed who shall supply the deficiency of such jury, *ib.* 1813. *p.* 40–1–2, *pass'd* 11*th Jan. in force* 1st *May* 1814.

Set off may be pleaded.

Accounts and demands to be settled by J. P. or jury.

Sec.—13. If the plaintiff in any action pending before a justice of the peace, shall be endebted to the defendant by bond. bill note, book account, or other contract. the defendant may plead in offsett to the plantiffs demand any sum within the jurisdiction of the justice, and the justice or a jury, if the case be tried by a jury. shall audit and adjust all accounts and demands between the parties brought before them if within the jurisdiction of a justice as aforesaid, and draw the just balance between the parties, and judgment shall be entered up for such balance accordingly. And the judgment so had and obtained shall be a complete bar to all demands thus audited, adjusted and decided on between the parties if within the jurisdiction of a justice of the peace as aforesaid: *Provided*, That no sum on any bond, note, book account, or any other demand sold endorsed or assigned to the plantiff or defendant shall be allowed in any plea in offset, unless it shall appear on trial that notice of such sale or assignment was given by the party holding such bill, note or other demand to the opposite party before the commencement of the plaintiff's action, which in such case shall be taken to be the day of service of the original writ in the action: *Provided*, That nothing herein contained shall cut off any demand the defendant may have against the plaintiff if judgment is rendered by default and: *Provided also*, That nothing herein contained shall cut off either party of his right of defence against such bond, note or other demand on account of such assignment, but such party shall be allowed to make his defence in such manner as he would have done had the suit been commenced by the original owner or had the original owner of such demand plead the same in offset. *ib. p.* 42-43. *ib.*

Proviso.

Proviso.

Sec. 14. When there are mutual judgments recovered, between the parties before a justice of the peace, such justice may, on applicction of either party, if such application is made in court before such justice, offset such judgments against each other, and the execution shall issue for such balance as remains, due after such offset. *ib. p.* 46. *ib.*

Set-off of mutual judg'ts.

Sec. 15. Justices of the peace shall have power to enter on their docket by consent of parties, amicable actions without any process, and to take the confession of judgment, of any defendant appearing before him in his own proper person in cases cognizable before a justice by this act, in which the same proceedings shall be had, and the same stay of execution be granted as is provided for by this act when the action is commenced by a summons or a warrant. *ib. p.* 55. *ib.*

Amicable actions.

Sec. 16. In all cases within the jurisdiction of a justice of the peace (except such as are herein before mentioned which shall be final*) any person who shall

Appeal to Cr Ct when allowed.

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*Ante sec. 12

think himself or herself aggrieved by the justice or judgment given or rendered before such justice, either by such justice or jury, shall have liberty to appeal therefrom within ten days after rendering such judgment, to the next court of common pleas [circuit court] to be holden within and for the said county, whether the same be a stated or adjourned term, and the party appealing, if the plantiff shall be bound with surety in a recognizance in a sum sufficient to cover the costs which have or may accrue in the following form to wit: We the subscribers acknowledge to be indebted to A. B. the defendant in the sum of dollars to be levied upon our respective goods and chattles upon this condition, that C. D. shall prosecute his appeal, and that if the judgment of the justice shall be affirmed by the court, or if he shall recover less than the amount of the judgment of the justice. that he shall pay all the costs that are or may accrue thereafter. If the defendant appeals the recognizance shall be taken in the same way and form in a sufficient sum to cover the sum in controversy and all the costs upon condition, that if the judgment shall be affirmed by the court, or if the plaintiff shall recover more than the amount of the judgment of the justice that such defendant shall pay the amount of such judgment and costs. Which recognizance shall be subscribed by the party appealing and the surety, and tested by the justice. And it shall be the duty of the justice to file on or before the first day of the next term of the court, with the clerk of said court. the original papers and process together with the aforesaid recognizance and other papers appertaining to the cause and a copy of the entries made in his docket. The clerk shall enter the appeal on his docket and the suit shall be tried and determined in its order like other cases where the parties are considered in court the first term, unless sufficient cause be shown to the court to grant a continuance and the costs accrued before the justice shall attend the event of the suit: *Provided*, That no appeal shall be allowed in any case where the judgment shall have been rendered by default or of non suit. *ib. p.* 43—44—45. *ib.*

If pl'ff. appeals to give bond.

Form of pl'ffs. bond.

Condition.

If deft appeal, he to give bond.

Form of defts. bond.

Condition.

J. P. to file papers, &c. with clerk.

Proceedings by court

Proviso.

Sec. 17. In all cases either party shall have the right of removing a judgment rendered by a justice of the peace, by a writ of *certiorari* to the court of common pleas [circuit court] of the county where the justice resides: *Provided*, such certiorari is applied for

Certiorari.

Proviso.

within thirty days after the judgment shall have been rendered. *ib. p.* 54. *ib.*

Cause and proceeding to be certified.

Sec. 18. Upon the return of the certiorari, the justice shall certify the proceedings had before him, by sending the original process, a copy of the judgment and execution, if any be issued and if the court shall set aside the proceedings of the justice, for erregularity or informality, appearing on the face of the same, the court shall examine into the merits of the case and give judgment as in other cases. *ib. ib. ib.*

How disposed of.

Appeal and certiorari notice to be given.

Sec. 19. In all cases of appeals not prayed for on the same days the trial is had and on certiorari, the party appealing or obtaining a writ of certiorari, shall notify the opposite party, at least ten days before the sitting of the next court authorised to try the same, and when application shall be made to the clerk of any court for a writ of certiorari, the party applying shall give bond and security, in at least double the amount of such judgment, and costs, and in default thereof execution shall issue as in other cases. *ib.* 1816. *p.* 124. *pass'd* 1st *Feb. in force* 1st *May*, 1817.

Bond on certiorari.

Stay of exe'n. Above $ 10 and not above $ 30.

Sec. 20. In all cases where the original process has been a summons or where the original process has been a warrant and the defendant shall enter into special bail for the action and the judgment shall be above ten dollars* and not exceeding thirty dollars there shall be a stay of execution for two months and when the judgment shall be above thirty dollars and not exceeding fifty dollars there shall be a stay of execution for four months; and when judgment shall be above fifty dollars and not exceeding ninty dollars there shall be a stay of execution for six months: *Provided nevertheless*, That if the plaintiff or his agent will make oath or affirmation before a justice rendering the judgment that he has reason to believe the defendant is secreting his property or putting it out of his hands in order to cheat and defraud his just creditors and that he verily believes that the debt will be lost, whereupon judgment was obtained unless execution immediately issues for the same, or will make other satisfactory proof to the justice of the same fact, then in that case it shall be the duty of the justice to issue execution forthwith against the goods and chattels only of the defendant, and not against his body until after the

If above $ 30.

Above $ 50.

Provided.

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*Under $ 10 see post sec 21

time limited for the stay of the same. *ib. p.* 49. *pass'd* 11*th Jan. in force* 1*st. May* 1814.

Stay of execution where judgt. is $ 10 or under.

Sec. 21. And where the judgment is ten dollars and under, the stay of execution shall be one month under the same restrictions and regulations that are provided respecting stay of execution in the thirteenth section of the above recited act.* *ib.* 1814. *p.* 88. *pass'd* 21*st, Jan.* 1815.

Stay of execution not allowed, &c. unless, &c.

Sec. 22. In all cases where the original process is a summons, the defendant shall not be entitled to a stay of execution, unless he shall enter special bail to the action in the same manner as is provided by the thirteenth section of the act to which this act is an addition,* for stay of execution where the original process is a warrant, which stay of execution shall be under the same regulations and restrictions as are pointed out in the said thirteenth section of the above recited act. *ib. p.* 34. *pass'd* 20*th Jan.* 1816.

Special bail how taken.

Sec. 23. Any person or persons who shall become special bail for any defendant or defendants, or for any person or persons against whom judgment has been rendered, so as to entitle such person or persons to a stay of execution, such bail shall before such justice of the peace acknowledge himself jointly bound with such principal, in the full amount of such judgment and costs, and the justice of the peace shall make an entry of such acknowledgment on his docket and at the time limited for the stay of execution the justice shall issue execution against both principal and bail and if the principal shall not satisfy such execution, and the constable cannot find property to satisfy the same, and if the said bail does not shew the constable property of the principal sufficient whereon to levy and satisfy said execution with costs, or deliver the body of said defendant to the constable, within ten days after he or they are informed that the execution has issued,† it shall be his duty to levy on the goods and chattels of the said bail and make return thereon as in other cases stating particularly the sum collected of the bail which statement made by the constable, shall be sufficient evidence for the bail, in an action against the principal to recover the same with interest and costs, on motion before a justice of the peace. *ib.* 1816. *p.* 125. *pass'd* 1*st Feb. in force* 1. *May*, 1817.

How proceeded against.

**Ante sec.* 20.

† *Bail may surrender principal. See post sec.* 30

J. P. to receive and pay over amount of judgments.

Sec. 24. Every justice of the peace rendering judgment as aforesaid shall receive the amount of the judgment if offered by the party or his agent before execution, and pay the same over to the person to whom it may be due or his agent on request for which service he shall receive, if the sum exceeds ten dollars, twenty five cents of the party paying the same in addition to his usual fees; and if the justice shall neglect or refuse to pay over on demand, the money so received, to the person to whom it is due or to his agent, such neglect shall be adjudged a misdemeanour in office, and upon conviction thereof in the court of common pleas [circuit court] the justice shall be liable to a fine not exceeding double the sum received by him as aforesaid, and it shall be the duty of the governor to revoke the commission of such justice. *ib.* 1813. *p.* 49-50. *pass'd* 11. *Jan. in force* 1. *May*, 1814.

Fees therefor.

Penalty for refusal.

In default of payment, execution to issue.

Sec. 25. If the amount of the judgment is not paid to the justice as aforesaid, he shall grant execution therefor together with costs; if for a sum not exceeding ten dollars, forthwith,* and for any other sum after the time limited for the stay of the same, which execution shall be in the form following, to wit: To the constable of   township, in the county   greeting: Whereas A. B. has obtained judgment before me, a justice of the peace in the township aforesaid, against C. D. for a debt of   and   for his costs. These are therefore to command you to levy the said debt and costs of the goods and chattels of the said C. D. and to expose the same within thirty days from this date, to sale by public vendue, giving due notice of the same, at least ten days previous to the day of sale, by at least three advertisements, put up at the most public places in your township and returning the overplus, if any, to the said C. D. and for want of sufficient distress you are commanded to take the body of the said C. D. in custody and convey him to the common jail of the county, the sheriff or keeper whereof is hereby required to receive him and him safely keep until the said debt and costs be fully paid, or the said C. D. be otherwise discharged by due course of law. You are also commanded to make return of this execution to me within thirty days from this date. Given under my hand this   day of   in the year   . E. F. J. P. *ib. p.* 50-51. *ib.*

Form of execution.

Return day.

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* *See ante sec.* 21.

Transcript of judgt. filed in clks office.

Sec. 26. Any person obtaining a judgment before a justice of the peace above the sum of ten dollars may file a transcript of such judgment in the office of the clerk of the court of said county where the justice resides which shall from the time of filing such transcript have the same lien on the real estate of the defendant as a judgment rendered in a court of common pleas [circuit court:] *Provided*; No execution shall issue out of the clerks office until an execution shall have been previously issued by said justice and the constable or other person to whom the same may be directed as aforesaid, shall have returned that no goods and chattels of the defendant are to be found in his township. *ib. p.* 55. *ib.*

No execution to issue by clk. until, &c.

Judgt. given in one township, &c.

Sec. 27. In all cases where a justice shall give judgment under this act and it shall be suggested, by the plaintiff or his agent, that the defendant against whom such judgment is rendered doth reside out of the township of the said justice, and that no goods or chattels can be found in the township where the justice resides, to satisfy the judgment, in such case it shall be the duty of the justice to issue an execution directed to the constable of the township where the defendant resides, or his goods and chattels are to be found, (if within the county where the justice resides) it shall be the duty of the constable to whom the execution is directed, to execute the same and make return thereof to the justice who issues the execution, in the same manner provided by this act respecting executions directed to the constable of the township where the justice resides. *ib. p.* 56-7. *ib.*

Execution to be directed where deft. resides.

J. P. dying, &c. before execution.

Sec. 28. Where any judgment shall have been rendered by any justice of the peace on confession or otherwise and such justice shall die, be removed from office or move out of the county before execution shall have been issued thereon, the party recovering such judgment may apply to any justice, in the township where the aforesaid justice resided, who shall issue his summons commanding the opposite party to appear before him and shew cause (if any he has) why execution ought not to issue against him for the same and if sufficient cause is not shown to the contrary execution shall issue accordingly, and a copy of the judgment signed by the justice so removed, or by the clerk of the county [circuit] court with whom the same may be lodged shall be sufficient evidence to issue execution for such sum as shall appear unpaid. *ib. p.* 58. *ib.*

How proceeded in.

Debt, damages, &c. to be endorsed on execution, &c.

Constable's duty.

Proceedings against constable.

Before J. P.

Or by action in C. C. on bond.

Sec. 29. On the delivery of an execution to a constable, an account shall be stated, on the docket of the justice, and also on the back of the execution, of the debt, interest and costs and fees due to each witness, juror and officer separately, from which the said constable shall not be discharged but by producing to the justice, on or before the return day of the execution, the amount of the execution in money, or the receipt of the person to whom the money is due, or such other return as may be sufficient in law. And in case of a false return, or in case he neglects or refuses to make return, or does not produce the amount of the execution or receipt as aforesaid, or make such other return as may be deemed sufficient. The justice shall on application of the party injured or his agent issue a summons commanding the said constable to appear before him on such day as shall be named in the summons not exceeding six days from the date thereof and then and there to shew cause why an execution should not issue against him for the amount of said execution. And if the constable shall neglect or refuse to appear as aforesaid or does not shew sufficient cause why execution should not issue against him then the said justice shall enter judgment against such constable, for the amount of the first execution with costs, from which judgment there shall be no appeal nor stay of execution, and execution shall issue forthwith for the same: *Provided always,* That the party injured may have his election to proceed against the constable in the manner herein directed or institute a suit in the court of common pleas [circuit court] against the constable and his sureties. *ib. p.* 51–2. *ib.*

Special bail may surrender principal.

Sec. 30. The special bail, entered before any justice of the peace in any civil suit, may surrender the principal, on the execution that may issue against such principal, whereupon his bail shall be discharged.* *ib. p.* 52. *ib.*

Proceedings against bail.

Sec. 31. When an execution issued by a justice of the peace, shall be returned, by the constable or other person to whom it is directed, that neither the body or property of the defendants can be found whereupon to levy the same, it shall be the duty of said justice to issue a summons against the bail in the original action,† if any, to appear before him on a certain day therein stated and shew cause, if any he has, why execution should not issue against him for the amount endorsed on the first execution with costs. And such summons may be directed to any constable of the township where the bail resides to serve and return the same if within the county where the justice resides, issuing the same, and if the said bail shall neglect to appear or appearing shall not show sufficient cause as aforesaid, execution shall forthwith issue against said bail, without appeal. And every surety of whom such recovery is had, or shall otherwise sustain damages by being bail as aforesaid, shall have a right to recover all such damages he, she or they shall sustain, against such principal upon action of debt founded on this statute before any court that has jurisdiction to the amount of the sum recovered or damages sustained by such surety: *Provided however*, That the bail shall have a right to surrender the principal, at the time and place he is summoned before such justice as aforesaid; *Provided*, It be before judgment against him as such bail, and after paying all costs that may have accrued on such action, such bail shall be discharged and the principal charged forthwith in execution. *ib. p.* 53–54. *ib.*

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* *See sec.* 23 & 31.

† *See sec.* 23.

Upon not showing cause, execution to issue.

Remedy of bail against principal.

Bail may surrender principal.

Pay costs.

Sec. 32. The several courts of record in this territory shall take no cognizance of any action suit or complaint made cognizable before a justice of the peace, by this act, except in cases of appeal and certiorari herein provided, and a plaintiff instituting a suit in any court of record which by this act is made cognizable before a justice of the peace shall have his writ abated with costs: *Provided however, That in all cases or demands exceeding fifty dollars the party may at his election or choice commence his suit before the court of common pleas [circuit court] and not before a justice of the peace, any thing in this act to the contrary notwithstanding.** *ib. p.* 55. *ib.*

Courts not to interfere with jurisdiction of J. P.

Sec. 33. Hereafter it shall not be lawful for the plaintiff to institute his suit in the circuit court for any sum within the jurisdiction of a justice of the peace. *ib. p.* 126. *pass'd 1st Feb. in force* 1. *May,* 1817.

J. P. exclusive jurisdiction.

ST. CHARLES COUNTY.

See Counties, sec. 1.

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* *So much of this section as is inconsistent with the following, is repealed. L. M. T. Dec. sess.* 1816. *p.* 126.

Sec. 1. *Be it enacted by the Legislature of the Territory of Louisiana,* That James Maxwell Jean Baptiste Vallé, Jaques Guibord, Saint James Beauvais, Francois Janis, Jean Baptiste Pratte, Joseph Pratte. Walker Fenwick, Andrew Henry, Timothy Phelps, Aaron Elliot, Nathaniel Pope, Joseph Spencer, junior, John Scott, William James, Thomas Oliver, Joshua Penniman, William Shannon, George Bullitt, Henry Dodge, and Harry Diel, shall be and they are hereby constituted a body politic and corporate, to be known by the name of "The trustees of the Saint Genevieve Academy, in the district of Saint Genevieve," and by that name shall have perpetual succession and a common seal. *L. L. T. pt.* 1. *p.* 267. *pass'd* 21*st. June* 1808.

Certain persons made a body politic & corporate.

Sec. 2. There shall be annually two stated meetings of the said board of trustees at the town of Saint Genevieve, to wit, on the first Mondays in July and December. The chairman of the board, with the advice or at the request of any three of the trustees, shall have power to call a special meeting, giving ten days previous notice thereof. Any nine of the said trustees at any stated, adjourned, or special meeting shall form a board or *quorum*, and a majority of them shall be capable of doing and transacting all the business and concerns of the academy, and particularly of entering into contracts for erecting or repairing any building or buildings necessary for the said institution, of making and enacting bye laws and ordinances for the government of the said academy, not contrary to the constitution or laws of the United States, or the laws of this territory; of filling vacancies in the board of trustees, occasioned by death, resignation, or removal out of the territory; of electing and appointing the principal, professors, and teachers of the said academy; of agreeing with them for their salaries and stipends, and of removing them for misconduct or breach of the laws of the institution; of appointing committees of their own body to carry into execution all and every the resolutions of the board; of appointing a chairman, treasurer and secretary out of their own numbers; and stewards, managers and other necessary and customary officers for the taking care of the estate and managing the concerns of the institution: *Provided*, that all vacancies in the board of trustees shall be filled at a stated meeting of the board. *ib. ib. ib.*

Meetings of the trustees.

How many form a board and do business.

Powers of trustees.

Sec. 3. The board of trustees shall have power to

Further powers of trustees.

demand and receive the money, materials and labour already subscribed, or that may hereafter be subscribed, for the use of the said institution, and expend the same for the purposes of said academy, in such manner as they shall deem proper. *ib. p.* 268. *ib.*

To establish a female institution, and make bye laws for it.

Sec. 4. It shall be the duty of the trustees as soon as the funds of the academy will admit of it, to establish an institution for the education of females, and to make such bye laws and ordinances for the government thereof, as they may think proper and necessary. *ib. ib. ib.*

English and French languages, &c.

Sec. 5. The trustees shall be enjoined to cause at all times the English and French languages to be taught in the said academy, together with such other languages and sciences, as the funds of the institution and circumstances will admit. *ib. p.* 269. *ib.*

Trustees to cause poor children, &c.

Sec. 6. The trustees shall be enjoined to cause the children of poor people, and the children of Indians residing in this territory and found qualified, to be instructed *gratis*: and to cause all the students to be educated *gratis* at the said academy in all or any of the branches of education, which they may require, whenever the funds of the institution shall, in the opinion of the trustees, permit these or either of these arrangements. *ib. ib. ib.*

No discrimination on account of religious sentiments.

rights of conscience not to be abridged.

Sec. 7. As the extension of useful knowledge ought to be the only object contemplated by this institution, no preference shall be given, or any discrimination be made, in the choice of trustees, professors, teachers, or students on account of religious sentiments; nor shall the trustees, professors, or teachers, at any time make bye laws, ordinances, or regulations, that may in any wise interfere with, or in any manner controul the rights of conscience or the free exercise of religious worship. *ib. ib. ib.*

Trustees may hold estates, and dispose of them.

Sec. 8. The said trustees and their successors by the name and style aforesaid, shall be capable in law to purchase, receive and hold to them and their successors, any lands, tenements, goods and chattels of what kind soever the same may be, which shall be given or devised to, or purchased by them, for the use of the said academy, and shall sell and dispose of the same in such manner as shall seem most conducive to the interest of the said academy. *ib. p.* 270. *ib.*

ST. GENEVIEVE COUNTY.

See Counties, sec. 3.

ST. LOUIS COUNTY.

See Counties, sec. 2.

ST. LOUIS SCHOOLS.

Trustees.

Powers of the corporation.

Sec. 1. *Be it enacted by the General Assembly of the territory of Missouri,* That Wm. Clark, Wm. C. Carr, Thomas H. Benton, Bernard Pratte, Auguste Chouteau, Alexander M'Nair and John P. Cabanné, and such other persons as shall be appointed in a manner and to the number herein after directed, shall form and constitute a board of trustees for the regulation of schools in the town of St. Louis, and the said corporation and their successors, are constituted and declared a body corporate and politic, and shall have full power to take and hold by gift, grant or otherwise, any estate, either real or personal, which may be given for the use of schools, and to lease, rent or dispose of to the best advantage, all the lands and other property which hath been or may be given by Congress to said town for the support of schools, and appropriate the same, with the avails of what is rented or leased as by law directed, and by themselves or their attornies to institute, maintain or defend, any suit or suits which shall be sued or prosecuted, either in law or equity for the recovery or defence of the said property, as they shall find necessary, to employ teachers, to direct the studies of the youth, to make and establish all necessary rules, regulations and bye laws for the good government of the said schools: *Provided however,* That the rules, regulations and bye-laws shall not be repugnant to the laws of this territory: *And provided also.* That the said bye laws shall not tend to give a preference to any religious denomination whatever. *L. M. T. Dec. sess.* 1816. *p.* 70. *pass'd.* 30 *Jan.* 1817.

Vacancies how supplied.

Sec. 2. The said trustees shall have power to fill all vacancies which may happen in their number, by death, removal or otherwise. And when and as often as they may deem it necessary to promote the interest of said schools, to appoint other persons in addition to their number: *Provided however,* that the number of trustees shall never exceed thirteen. *ib. p.* 71. *ib.*

First meeting of the board.

Sec. 3. The person first named in the board of trustees, is empowered to call the first meeting of the board at such time and place as he may think fit, and when convened, the said trustees shall appoint a chairman, Rules.

Town property.

Buildings for schools.

and adopt regulations for their own proceedings, shall take into consideration the state of the grants and donations for the use of schools, and devise means for securing the same and of putting them in a state of profit, and as soon as the state of the funds which may be appropriated, will justify, shall erect or procure suitable buildings, and provide the necessary apparatus for instruction and transact such other business as they shall find necessary and proper, to be done towards establishing schools in the town of St. Louis. *ib. ib. ib.*

Records of proceedings,

Report to legislature.

Sec. 4. The trustees shall keep records of their proceedings, and when required, shall lay them with the state of the funds and appropriations by them made before the legislature of the territory. *ib. p. 72. ib.*

STRAYS.

Money or goods found.

Notice to a justice of the peace.

Appraisement

Copy sent to clerk of the county.

Clerks duty and fees.

Sec. 1. Any person finding any money or goods of the value of five dollars, or taking up any stray whereof the owner is not known, shall within ten days after finding or taking up of the same, give notice thereof to some justice of the peace of the township where the same was found or taken up and if no justice of the peace reside in the said township, then to some justice of the peace of the adjoining township, and it shall be the duty of the justice, to issue his order in writing, to three disinterested householders, if they cannot be had otherwise commanding them to appraise and particularly describe in writing, the value of such goods or the amount of the money so found, and in case a beast shall be taken up, to particularise and describe as near as circumstances will admit the brands, marks, age, colour and stature of said beast, and it shall be the duty of the appraisers, or any two of them, to make out under their hands, two lists of the valuation and description so made one of which they shall deliver to the justice, who shall file the same in his office, and it shall be the duty of the justice of the peace, to deliver a copy of said valuation and description to the person finding or taking up as aforesaid, which shall be by him transmitted to the clerk of the county, within fifteen days after the said valuation and appraisement is made, and it shall be the duty, of the clerk to record the same in a book to be by him kept for that purpose, for which he shall receive twenty-five cents. And the other list the appraisers shall deliver to the person finding or taking

Finder or taker up to advertise.

up the same. And it shall be the duty of the person finding or taking up as aforesaid, to set up, at three of the most public places in the township where the goods or money were found, or beast taken up, a copy of the valuation or description made out by the appraisers as aforesaid, within five days after the date of such valuation and description; which said valuation and description so made as aforesaid, shall be sworn to by the said appraisers. *L. M. T. Dec. sess.* 1816, *p.* 86. *pass'd* 31. *Jan. in force* 1st *June*, 1817.

Appraisment to be sworn to.

Sec. 2. If no owner shall appear and prove his property within forty days after setting up the copies of the valuation and description as aforesaid, and the value of the property so found or taken up, shall exceed the sum of twenty dollars, it shall be the duty of the person finding or taking within thirty days thereafter, to transmit to the printer of some news-paper within this territory, a copy of the valuation and description filed with the clerk, as aforesaid, certified by the said clerk, which shall be inserted in such paper three weeks successively, for advertising which the printer shall receive his usual and stated price; and if no owner shall appear and prove his property within two years after such publication, the same shall be vested in the finder or taker up: *Provided always,* That the owner may at any time thereafter by proving his property recover the goods or money so found or beast taken up, or the appraised value thereof, at the option of the taker: *And provided also,* That the fees and expences of taking up and keeping said stray, or property, shall always be paid by the owner of such stray, or property, on his proving the same or the value thereof, to be paid by such owner, or deducted out of the appraised value thereof. *ib. p.* 87. *ib.*

Publication in newspaper.

Limitations against claims

Proviso.

Sec. 3. Where the valuation of goods or money found, or beast taken up as aforesaid shall not exceed twenty dollars and no owner appears and proves his property within two years from the time of setting up copies of the valuation and description, as pointed out in the first section of this act, the property so found or taken up, shall be vested in the finder or taker up of the same. *ib. p.* 88. *ib.*

Final limitation.

Sec. 4. When any owner shall appear within the time limited as aforesaid, and claim his property, and the person taking up or finding the same shall neglect or refuse to restore to the person claiming the goods or money found, or beast taken up, the said property,

Refusal of the taker up to redeliver.

or the appraised value thereof, then in that case the owner or person claiming the same, may apply to a justice of the peace, when the valuation and appraisement shall not exceed ninty dollars, which said justice is hereby empowered to issue process, hear, try and determine the same, in the same manner as other civil actions are, which are cognizable before a justice of the peace, saving to either party the right of appeal, in the same manner as provided by an act entitled "an act defining the powers and duties of justice of the peace in matters of a civil nature"* *Provided*, That the defendant shall not be entitled to a stay of execution. *ib. ib. ib.*

Duty of the justice.

Sec. 5. No person shall take up as a stray any neat cattle, sheep or hogs, between the first day of April and the first day of November following, unless the same be found within the lawful fence or enclosure of the taker up, nor shall any person take up any stray beast, at any other place, than at his plantation or place of residence. *ib. p.* 89, *ib.*

When cattle cannot be taken up.

Sec. 6. As a reward to the person taking up any stray beast, there shall be paid to him by the owner of such beast, two dollars for all horse kind, and for every head of neat cattle fifty cents, and for every sheep or hog above a year old, twenty cents, and for keeping the same the taker up shall be allowed for keeping such horse, not exceeding the sum of two dollars per month, from the first day of November, till the first day of March, and not exceeding the sum of fifty cents per month for keeping each colt or head of neat cattle, between the times aforesaid. Provided, that nothing herein contained shall be construed to allow any thing for keeping any unbroken horse or horses taken up within their usual range, and where the parties cannot agree, then a justice of the peace shall estimate how much the taker up shall receive from the owner, not exceeding the sum aforesaid. *ib. ib. ib.*

Reward for taking up.

Sec. 7. If any stray beast taken up as aforesaid, shall die or get away without the fault, or neglect of the taker up, before the owner shall claim his right, the taker up shall not be answerable for the same. *ib. p.* 90, *ib.*

When strays die.

Sec. 8. If any person shall take up any stray beast, at any other place, than at his plantation or place of residence, or having taken up any stray, shall fail to comply with the requisitions of this act, or shall use or

Neglects of the taker up.

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* *See small debts sec.* 16.

work any stray beast, contrary to the true intent and meaning of this act, or if such person, shall use or suffer the same to be used, before he shall have given notice to the justice of the peace, except in taking the same to the justice of the peace, to be appraised according to the provisions of the first section of this act, every such person offending, shall forfeit and pay the sum of fifty dollars, to be recovered before any justice of the peace, by an action of debt, founded on this statute, to the use and benefit of any person who shall sue for and prosecute the same to effect, *Provided always*, that nothing herein contained shall prevent the owner from having and maintaining his action against such person, for the recovery of damages he may sustain, in consequence of said beast being used or worked as aforesaid. *ib. ib. ib.*

Penalty.

Proviso.

Sec. 9. When any person shall notify a justice of the peace, that he has found any goods or money, or taken up any stray beast as pointed out by this act. It shall be the duty of the justice, before he appoints the appraisers, to administer to the person finding or taking up the same, the following oath or affirmation, (You solemnly swear or affirm, as the case may be, that the beast by you taken up, was taken up at your plantation or place of residence, and that the marks and brands have not been altered since the taking up of said beast, that the owner, to you is unknown, and that you verily believe that said beast is running at large without the consent of the owner,) and in case of goods or money, the person finding the same, shall make oath that the owner to him is unknown, and that he has not directly or indirectly secreted or disposed of any part of the same, but that the said goods or money, are in the same situation he found them. *ib. ib. ib.*

Oath of taker up.

Sec. 10. If any person shall trade, sell or take away, or shall attempt to trade, sell or take away out of the county where the finders or taker up reside for the purpose of converting the same to his own use, any goods or money found, or beast taken up within the times specified for the owner to appear and claim his property, every such person offending shall forfeit and pay a sum not exceeding double the appraised value thereof, to be recovered by any person sueing for the same, before any justice of the peace, when the same is within the jurisdiction of a justice, and if not within the jur-

Misapplication of property found or taken up.

Penalty.

isdiction of a justice of the peace before any court having jurisdiction of the same. *ib. p.* 91. *ib.*

Fees & compensation.

Sec. 11. The fees of the justice for appointing appraisers, shall be twenty five cents, for a certified copy of the valuation and appraisment twenty five cents; and each appraiser shall be allowed twenty five cents, and the persons taking up any stray beast, and furnishing the same with suitable and necessary food, shall be allowed compensation therefor according to the provisions of the eight section of this act, *And provided,* That in all cases under this act, the fees of the justice of the peace and appraisers, shall first be paid by the taker up and shall be repaid to him by the owner. *ib. p.* 92. *ib.*

SUPERIOR COURT.

Two terms annually in each circuit.

Where.

Sec. 1. The superior court for this territory shall hereafter hold two terms annually in each of the circuits now established by law, and that the place of holding the superior court for the northern circuit shall be the town of St. Louis, in the county of St. Louis, and the place for holding the superior court for the southern circuit shall be the town of Jackson in the county of Cape Girardeau. *L. M. T. Dec. sess.* 1815. *p.* 48. *pass'd* 21. *Jan.* 1816.

Seal,

Sec. 2. It shall be the duty of each of the clerks, to be appointed under this law, to procure a seal purporting to be the seal of the superior court for the circuit in which they shall be appointed.* *ib. p.* 57. *ib.*

Appellate jurisdiction.

Sec. 3. The said superior court shall have appellate jurisdiction from all circuit courts both in civil and criminal cases by this act made cognizable in the circuit courts.† *ib.* 1814. *p.* 54. *pass'd* 4*th Jan.* 1815.

Terms

Northern c't.

Southern c't.

Sec. 4. The superior court of this territory, shall be held at the times and places following, to wit: For the northern circuit at the town of St. Louis in the county of St. Louis, on the fourth Monday in March and the fourth Monday in August; for the southern circuit at the town of Jackson in the county of Cape Girardeau on the third Monday of April and September. *ib.* 1816. *p.* 136. *pass'd* 1. *Feb. in force* 1. *July,* 1817.

SPECIAL SESSIONS.

Special session to try capital cases.

Sec. 5. And whereas by an act of congress, passed the fourth day of June eighteen hundred and twelve, entitled "an Act providing for the government of the territory of Missouri," the superior court of the territory has the sole power and authority to try persons accused of any offences, by law made capital, and whereas those accused of such offences, ought to have a speedy and impartial trial by a jury of the vicinage; which cannot with convenience and justice, either to the government or the accused, be had unless the judges of the superior court should hold special terms of their courts, for the trial of such offenders: *Be it therefore enacted,* That it shall be and is hereby made the duties of the sheriffs of the several counties in this territory, within fifteen days after any person shall be committed to his custody, charged with a capital offence, to transmit information thereof to the governor of the territory, stating therein, the name, the time when and the offence for which such person stands committed in his custody, whereupon it shall be the duty of the governor, within eight days after he shall have received such information, to issue his proclamation and publish the same in one of the newspapers published in St. Louis, stating therein the information so by him received, which proclamation, so published, shall be deemed sufficient notification to the said judges, whose duty it shall thereupon be, to open and hold a special superior court for the trial of such offender or offenders, in any of the several counties of this territory, in which the offence may have been committed, and that on any of the several days, times and places hereafter mentioned which shall next happen after such proclamation shall be so made and issued as aforesaid, that is to say, in the county of St. Charles, at the town of St. Charles, on the fourth Mondays in April, July and October, in the county of St. Louis, at the town of St. Louis on the first Mondays in May, August and November; in the county of Washington at Potosi, on the third Mondays in May, August and November; in the county of St. Genevieve, at the town of St. Genevieve, on the fourth Mondays in May, August and November; in the county of Cape Girardeau, at Jackson, on the first Mondays in June September, and December; in the county of New Madrid, at the place of holding courts therein, on the second Mondays in June, September and December; in the county of Lawrence at the usual place of holding the circuit court for said county, on the fourth Mondays in June, September and

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* *See clerks of superior courts.* † *See circuit courts, sec.* 1.

How court to be called.

Duty of sheriff

Duty of governor.

Times and places of holding courts

December, yearly and every year hereafter:* *Provided always nevertheless*, That if such proclamation shall be issued within thirty days of any of the terms above specified for holding the said special superior court, in such county, then the said special superior court shall not be held until the next following term thereafter, and the said judges shall meet at the time and place appointed by this act, and proceed to open and hold a term of the superior court for the trial of such case or cases as aforesaid, and if they find on the trial that the offence committed by the prisoner is less than a capital offence, they shall nevertheless, try determine and pronounce judgment and order execution for such offence according to law; and said court so met shall have power to adjourn from time to time and to hold adjourned courts for the trial of such criminal or criminals, and to procure the attendance of witnesses. And the expence of notifying the governor, by the sheriff and all other costs shall be taxed and paid out of the criminals estate, if convicted, and such estate be sufficient to pay the same, but if the criminal be not convicted, or if convicted his estate should be insufficient to pay the costs, the same shall be paid out of the territorial treasury, on the order of the judges of said court. *ib.* 1815. *p.* 52. *pass'd* 21. *Jan.* 1816.

Thirty days notice.

Duty of judg's.

Court may adjourn, &c.

Expences how paid.

Sec. 6. The superior court shall hold their special sessions of the superior court for the trial of capital offences and appoint a clerk in the *said* county of Howard, at the place appointed by this act for holding the circuit court, and the said terms shall commence on the same days that are by this act appointed for holding the said circuit courts therein,† in every respect as is provided by an act passed the present session of the General Assembly entitled "an Act altering the times and places of holding the superior and circuit courts of this territory and for other purposes.‡ *ib. p.* 89. *pass'd* 23*d Jan.* 1816.

Time of holding court in Howard county.

Sec. 7. It shall be the duty of the said judges or any two of them to issue their precept directed to the sheriff or coroner (as the case may be) of the proper county in which such special superior court is to be held at least twenty days before the time of the holding of such

60 jurors to be summoned.

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* *County of Howard, post sec.* 6.

† *The second Mondays in July, October and April annually. L. M. T. Dec sess,* 1815. *p.* 89.

‡ *Ante sec.* 5.

court; commanding him to summon sixty good and lawful men of his county, qualified by law to serve as grand and traverse jurors at such special superior court and the said court shall appoint their clerk, who shall be commissiond by the governor, take the oath to be taken by other clerks, and give bond with security to be approved of by the court, to the governor and his successors in office, in the sum of five hundred dollars, seasonably to record the proceedings of the said court, and deliver the whole, safe and undefaced to his successor in office, who shall perform the same duties and be entitled to the same fees as are by law allowed to the clerks of the superior courts for similar services. And any person summoned to serve as a juror or witness who shall refuse or neglect to attend at the time and place of holding the said court to which they were summoned, shall be subject to the same fines and penalties as are by law inflicted for the like omissions or neglects in the superior court: *Provided always nevertheless,* That nothing herein contained shall be so deemed and construed as to deprive or take away any of the powers or duties of the judges of the superior court, for the trial of any capital offence or offences committed in any of the counties in which the superior courts of the territory now are or hereafter shall be by law directed to be held. *ib. p.* 54. *pass'd* 21 *Jan.* 1816.

Clerk to be appointed

Oath.

Bond.

Duties & fees.

Juror or witness not attending fined.

Proviso.

ARKANSAS.*

Sec. 8. The court of common pleas within the said county of Arkansas is hereby abolished, and the general court of the said county shall exercise and possess the same jurisdiction in all respects as heretofore possessed and exercised by the court of common pleas of said county.† And that in all appeals from justices of the peace and other process heretofore made returnable to the said court of common pleas, shall hereafter be made returnable to, heard and determined in the said general court. *ib.* 1814. *p.* 58. *pass'd 7th Jan.* 1815.

Arkansas jurisdiction.

Sec. 9. *After the taking effect of this act* [15th May 1816] *the general court of the county of Arkansas shall be holden on the first Monday in May and October annually in lieu of the times now established.*‡ And *that* the said

Arkansas.

Jurisdiction in probate business.

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* *A superior court established at Arkansas. See Organic Law, chap* 2.

† *As to Jurisdiction, See Organic Law, chap.* 2. *sec.* 1.

‡ *Altered, see post sec.* 11, 12, 13.

In county matters. general court shall possess the same jurisdiction in intestate and testamentary matters as are or shall hereafter be possessed by the circuit court of this territory; and *that* the said general court shall have jurisdiction of all county business in said county, and hold special sessions when necessary for such purposes, in as full and ample a manner as is or may be exercised by the several county [circuit] courts in this territory. *ib. p.* 87, *pass'd* 21 *Jan.* 1815.

Appeals and writs of error. Sec. 10. All appeals and writs of error from the general court of the county of Arkansas, shall be made returnable to the superior court in and for the southern circuit. *ib.* 1815, *p.* 97, *pass'd* 23 *Jan.* 1816.

Duties. Sec. 11. *In addition to the terms of the general court now held by law in the county of Arkansas;* the said general court shall be held on the first monday in January and July annually,†* for the purpose of trying persons charged with offences of a criminal nature, and the said general court are at the terms aforesaid, authorised to do and transact any county business, that may be necessary in the said county of Arkansas. *ib. ib. ib.*

Terms. Sec. 12. The terms of the superior court, in and for the county of Arkansas, shall hereafter be holden in the said county, on the third monday in July, and first mondays in November and March in each year, in lieu of the terms now established by law for holding the same.‡ *ib.* 1816, *p.* 43, *pass'd* 24*th Jan. in force* 1*st June,* 1817.

Duty of judge. Sec. 13. It shall be the duty of the judge of the superior court for the county of Arkansas, to hold three terms of the said superior court, in said county, at the times herein before mentioned. *ib. p,* 44 *ib.*

SURVEYOR AND SURVEYS.

By whom appointed. Sec. 1. It shall be the duty of the court of common pleas [circuit court] in each and every county in this territory at their first session after this act takes effect, or as soon thereafter as may be, to appoint some person

Candidates to be examined. in their county, who is well qualified to act as county surveyor, and it shall be the duty of said court to examine or cause to be examined, the persons applying for said appointment, and thereupon to appoint the person or candidate applying for the office, who shall be best qualified to perform the several duties herein after directed; and shall forthwith certify such appointment under the seal of the court to the governor, who shall thereupon grant a commission for the person so appointed, and the surveyor, after having received such commission, shall, before he enters upon the duties of his office, take an oath of office according to law, and shall give bond with one or more sufficient securities to be approved of by the court of common pleas [circuit court,] in the penal sum of two thousand dollars, payable to the governor, and his successors in office, for the use of every person concerned, or to whom any damage may accrue through the neglect or misconduct of such surveyor, conditioned for the true and faithful performance of the several duties of his office or appointment of county surveyor agreeably to law. *L. M. T. Dec. sess.* 1813, *p.* 34.

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* *Ante sec.* 9.

† *Changed, post sec.* 12.

‡ *Sec.* 9 *and* 11 *ante.*

How and by whom commissioned.

To take oath.

Give bond.

Condition.

Sec. 2. It shall be the duty of the county surveyor to survey all lands which may be sold for taxes in his county, on application of any person producing to him a certificate from the proper officer agreeably to law. *ib. p.* 35 *ib.*

To survey lands sold for taxes.

Sec. 3. It shall be the duty of the said county surveyor to execute and perform all orders to him directed by any court of record, for surveying or resurveying any tract of land, the title of which is in dispute or litigation before such court, also all orders of survey for the partition of real estates. *ib. ib. ib.*

To perform orders of courts.

Sec. 4. The surveyor of each county shall keep a correct and fair record of all surveys made by himself and deputies, in a book or books to be by him procured for that purpose. He shall number his surveys progressively, and shall also file and preserve a copy of the calculation of each survey, endorsing thereon its respective number, a copy of any survey shall be furnished by the surveyor, to any person requiring the same, on payment of the fees herein after directed. *ib. ib p.* 36.

To keep records of proceedings.

Number his surveys

File copies of calculations.

Give copies of surveys.

Sec. 5. The deputies appointed by any surveyor, before they proceed to discharge their duties, shall take an oath, well, truly and faithfully to discharge the duties of deputy surveyor. *ib. ib. p.* 37.

Deputies to take oath.

Sec. 6. Each chainman or marker employed by the county surveyor or his deputies shall, before he commences the duties assigned him, take an oath or affir-

Chainmen or markers.

Take oath.

Expence by whom paid.

Proviso.

Fees of chainmen or markers.

mation, faithfully and impartially to execute the duty of chainman or marker, (as the case may be) which oath or affirmation the county surveyor or his deputies are hereby authorised and required to administer. The expence of chain carriers and markers shall be paid by the party at whose request the survey is made: *Provided however,* That the chain carriers and markers may be provided by the party requesting such survey, if approved of by the surveyor, and each chainman or marker shall be allowed seventy five cents for each and every day he is actually employed.

No surveys made by other persons legal evidence.

Except by authoity of U. S. or consent.

Surveyor interested, another person to be appointed.

His powers & duties.

Sec. 7. No survey or resurvey hereafter made, by any person except the county surveyor or his deputy shall be considered as legal evidence in any court of law or equity within this territory, except such surveys as are made by authority of the United States or by mutual consent of parties: *Provided always,* That where it shall appear that the county surveyor is interested in the making of any survey of a tract of land the title of which is in dispute before the court, the said court shall direct the survey or resurvey to be made by some capable person who is in no wise interested, who shall be authorised to administer oaths in the same manner as the county surveyor is directed by the provisions of this act and shall return said survey or resurvey on oath or affirmation and shall receive for his services the same fees that the county surveyor would do for similar services. *ib. ib. p.* 35 36.

Surveyor's fees.

Sec. 8. The several county surveyors may demand and receive for their services the following fees, to wit: for each survey not exceeding fifty acres or arpens the sum of two dollars, and for every additional acre or arpent one half cent, when the tract does ~~not~~ exceed six hundred and forty acres or arpens and one fourth of a cent for every acre or arpent over that quantity; copy of such survey the sum of twenty five cents, where the survey does not exceed fifty acres, and above that quantity twelve and a half cents for every hundred acres in addition to the first charge, recording each survey fifty cents, and for every mile he shall travel in going to and returning from the land ordered for survey, by the customary rout, five cents. *ib. p.* 36 *ib.*

TAVERNS AND TATERN-KEEPERS

Taverns, &c,

Sec. 1. For the prevention of disorders and mischiefs which may happen by a multiplicity of public houses of entertainment, no person or persons shall after the first day of November next, have or keep any public inn, tavern, dram-shop or public house of entertainment, in any town, place, or district [county] within this territory, unless such person or persons shall first be licensed therefor by the court of quarter sessions [circuit court,] under the penalty of paying ten dollars for every day such person or persons shall keep such public inn, tavern, dram-shop or public house of entertainment, to be recovered with costs before any two justices of the peace of the district [county] in which the offence shall have been committed; one third of which shall be for the use of the person prosecuting the same and the other two thirds to the treasury of the district [county.] *L. L. T. pt.* 1 *p.* 41–42.

not to be kept without licence.

Penalty.

How recovered.

How appropriated.

Sec. 2. The said licenses shall be given for no longer time than one year. but may be annually renewed by the said court. And if any person so licenced shall knowingly suffer any disorder, fighting or drunkeness in his, her or their public house or houses, he she or they shall for every such offence forfeit and pay to the treasury of the district [county] the sum of two dollars to be recovered as in the first section of this act is provided for; and the said court, upon sufficient proof that any person so licenced, keeps an irregular, disorderly public house shall have the power to revoke and annul the said license; after which, if such person shall continue to keep a public inn, tavern, dramshop, or public house of entertainment, such person shall be liable to the penalties provided for in the first section of this act, to be recovered and disposed of in like manner; and all tavern-keepers and inkeepers who shall not provide and furnish good entertainment and accommodation for man and horse shall be liable to have their licenses revoked at the discretion of said court. *L. L. T. pt.* 1 *p.* 42–43.

To be licenced for one year.

Disorderly houses.

Penalty.

How recovered.

Revocation of license.

Continuing to keep tavern after lisence revoked. Penalties, &c.

Good entertainment to be provided.

Sec. 3. The person obtaining such license shall pay therefor for every license, a sum not less than ten dollars nor more than thirty dollars according to the discretion of the said court, who shall take into consideration the stand and business which may be probably done therein; which said sums so received for licenses shall be paid by the said court forthwith. into the district [county] treasury, taking the treasurer's receipt therefor. *L. L. T. pt.* 1, *p.* 43.

Sum to be paid for license.

How appropriated.

No person to sell liquor to be drank in or about his house, &c.

Sec. 4. No person or persons, other than those qualified by this law so to do, shall presume under any colour or pretence to sell, barter, or deliver, any wine, rum, brandy, whiskey, or other spirits, strong water, beer, cider, or any mixed or strong liquors to be used or drank within his, her or their houses, yards or sheds, with his or their knowledge, consent or privity, or to be used or drank in any shelters, places or woods near or adjacent to them, by companies of servants, slaves or others, nor to retail or sell to any person or persons, any rum, brandy, whiskey or other spirits or strong water by less quantity or measure than one quart, nor any wine by less quantity or measure than one quart, nor any beer, ale, porter or cider by any quantity or measure less than one gallon, the same liquors being respectively delivered to one person and at one time, without any collusion or fraud, contrary to the true intent and meaning of this act, every person offending herein shall pay a fine of five dollars, to be recovered by indictment and to be paid into the treasury of the proper district [county.] *L. L. T. pt.* 1. *p.* 43–44.

Nor to retail any spirits, beer, &c.

Fine how recovered & appropriated.

The selling of liquors to servants & slaves and soldiers of U. S. army.

Sec. 5. No person shall furnish, supply or sell to any bound servant or slave, or to any non commissioned officer or private soldier of the United States army, any rum, brandy, whiskey, spirits or any other strong liquors or waters mixed, either within or without doors; nor shall receive, harbour or entertain any bond servant or slave, or any non commissioned officer or private soldier of the United States army, in or about his, her or their houses without a license obtained from the master or mistress of such servant or slave, respectively or from some commissioned officer of the United States army, under the penalty of paying the sum of ten dollars, to be recovered before any justice of the peace of the district [county] wherein the offence was committed, and be paid into the district [county] treasury. *ib. p.* 44 *ib.*

Or barbouring or receiving or entertaining them prohibited.

Penalty how recovered.

Minors &c. not liable for tavern expences.

Sec. 5. No action shall be supported in any of the courts in this territory by any tavern keeper or innkeeper against any minor or the parents or guardians of any minor for any charges of tavern or inn expences. unless such minor shall have been permitted or used to conduct business for himself and on his own account. *ib. ib. ib.*

How appointed.
Oath.
Bond.
Condition.

Sec. 1. The governor of this territory shall appoint and commission some fit and competent person as auditor of public accounts who shall, before he enters on the discharge of his duties, take an oath of office according to law and give bond to the governor of the territory and his successor in office, with good and sufficient surety, to be approved by the governor, in the sum of three thousand dollars conditioned for the faithful discharge of the duties of his office. *L. M. T. Dec. sess. 1813, p. 62. pass'd 15 Jan. in force 1st Feb.* 1814.

Salary.
Duties.

Sec. 2. The said auditor shall hereafter receive in full for his services, a salary of three hundred dollars annually to be paid out of the territorial treasury; and shall be bound well and truly to execute and faithfully to discharge all and singular the duties appertaining to his office according to law. *ib. ib. ib.*

Powers and Duties. To keep accounts.
Settle with public debtors & collectors.
How to compel a settlement.
May examine party on oath.
How to keep public accounts.
To lay them before legislature.

Sec. 3. The said auditor is authorised and required to state and keep exact accounts of all officers of the territory who are entitled to receive from the territorial treasury, salaries fixed by law, and to audit and enter in account, all other demands for money in the treasury, made under authority of law, to settle the accounts of all public debtors and of all collectors of any revenue or tax levied under a law of this territory and payable to the treasurer* to call upon such debtors to render account at proper times, and on their failure so to do, to instruct the attorney general [circuit attorney] or his deputies to proceed, by motion for compelling them to a final settlement; and though it should appear on trial that the defendant oweth no balance to the public; yet his having failed to render an account to the auditor and take from him his *quietus* shall subject him to the payment of all costs incurred by such proceedings to the territory; to require information on oath or affirmation from any person party or privy to any matter relative to any account under his examination and material for his information; to state and keep all accounts, so as to shew the amount of all certificates given on the treasurer, for what service or article of public expences they were given, and to lay before the legislature the said general account, together with an account of all balances due to and from the territory, as nearly as he shall be able.

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* *See revenue sec.* 36–38

L. L. T. pt. 2 *p.* 18–19 *pass'd Oct.* 30*th* 1810. *in force* 1*st. Jan.* 1811.

To keep a book and enter certificates.

Sec. 4. The auditor of the territory shall keep a book in which he shall make an entry of every certificate which he shall draw on the treasurer for the payment of money, in order, as he shall issue them, in such manner as to shew the date, the name of the person in whose favour it was drawn and the nature of the claim upon which it was founded. He shall begin the first day of January annually and number each certificate, beginning at number one, and continue progressively until the last day of December following inclusive. *ib. p.* 19–20. *ib.*

Certificates have to be numbered.

To keep a book for treasurers receipts.

Sec. 5. The auditor shall keep a book for the purpose of entering the Treasurer's receipts of all money paid into the treasury by the sheriffs or any collectors of the territorial revenue. *ib. p.* 20. *ib.*

TERRITORIAL TREASURER.

By whom appointed.

Oath

Bond.

Condition.

Sec. 1. The governor shall also appoint and commission a fit and competent person as territorial treasurer, who shall, before he enters on the discharge of his duties, take an oath of office and give bond, to the governor of the territory and his successor in office, with sufficient surety, to be approved of by the governor in the sum of fifteen thousand dollars, conditioned for the true and faithful discharge of the duties of his office. *L. M. T. Dec. sess.* 1813. *p.* 62–63. *pass'd* 15*th Jan. in force* 1*st. Feb.* 1814.

Salary.

Duties.

Sec. 2 The said treasurer shall receive, in full for his services, a salary of three hundred dollars annually, to be paid out of the territorial treasury. And it shall be the duty of the said treasurer to execute and discharge all and singular the duties required of him by law. *ib. p.* 63. *ib.*

Duties.

To receive money of territory and keep it safe.

To keep accounts.

Sec. 3. It shall be the duty of the territorial treasurer to receive all monies which by law shall be payable into the territorial treasury,* and the said monies safely to keep for the use of the territory. And it shall be the duty of the said treasurer to keep an accurate intelligent and comprehensive account of all monies by him received and disbursed, in a book to be provided for that purpose, in which book he shall state from whom monies have been received, and on what account to whose order and to whom monies have been paid, and on what account, and he shall pay out of the said treasury all monies which may be drawn for by order of the legislature for their incidental expences, also all monies which may be drawn for by order of the governor for the payment of salaries of the territorial officers* as well as all other territorial expences and also to the orders of the general [superior] court such sums as may be necessary to defray the incidental expences of such court,† and the said treasurer shall when required lay before the legislature an accurate and certified transcript of the territorial treasury account together with his aforesaid book for their inspection and examination. *L. L. T. pt.* 1 *p.* 363-4. *pass'd* 11*th Nov.* 1808 *in force* 1*st. Jan.* 1809.

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* *Post sec.* 6.

Pay out.

To lay a transcript of accounts before legislature.

Sec. 4. When any account and order authorised as is provided by section 20‡ shall be presented to the territorial treasurer for payment, the said treasurer shall file the same as his voucher and shall pay the amount due thereon to the proprietor thereof, but should there not be a sufficient deposit in the territorial treasury to enable the said treasurer to discharge the said account and order as aforesaid nor any part thereof, then the said treasurer shall forthwith give to the proprietor of such order or account, as aforesaid, a certificate of the amount due him from the territorial treasury on settlement of said account and order; the said certificate to be given in the following form to wit; "I certify that the territory of Louisiana [Missouri] *is justly indebted to A. B. or bearer the sum of* for value received, as will appear from his account and the order of now on file in my office, bearing date the day of ," and shall sign the same as treasurer of the territory of Louisiana [Missouri.] The certificates issued as aforesaid shall bear interest at the rate of six percentum per annum, and are hereby made a lawful tender in the discharge of any debt due to the territory treasury. The territorial treasurer shall and he is hereby directed to make out and sign any number of certificates, as aforesaid for any sum not less than twenty dollars at the discretion of the proprietor of any lawful claim as aforesaid against the territory, to the

Payment of public accounts.

If there are not funds sufficient in the treasury.

Treasurer to issue a certificate.

Form.

Certificate to be on interest and be a legal tender in payments to territory.

Creditors may have any number required.

Not less than $20

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*Ante sec. 3.

†Post sec 5.

‡See sec. 5.

Territorial treasurer to pay certificates.
In what order.

On payment of certificate treasurer to take a receipt for interest.

amount of said claim. The territorial treasurer shall at all times liquidate the debt of the territory by redeeming the certificates or any part thereof which he may have issued as aforesaid when the same shall or may be presented to him for payment, paying a due respect to the priority of the accounts or orders upon which he has issued the same. When any certificate shall be redeemed by the territorial treasurer, the said treasurer shall take the receipt, of the bearer, for the amount of the interest he has actually paid the said bearer, on the said certificate, and the said treasurer shall receive on [no] credit for the interest on any certificate except the same be entered on the certificate as aforesaid. *ib. p.* 365-6-7 *ib.*

Treasurer not to pay money except on auditors certificate.

Sec. 5. It shall not be lawful for the treasurer to pay any money on account of the public, but on a certificate from the auditor, save only the salary of the auditor. *ib pt.* 2 *p.* 20. *pass'd* 30*th Oct.* 1810. *in force* 1*st. Jan.* 1811.

Treasurers duty on receiving payment of monies into the treasury.

Sec 6. Where any person shall hereafter pay any sum or sums of money into the territorial treasury the treasurer on receiving the same shall forthwith make out a receipt for the amount and carry the same to the auditor who is hereby required to give to the treasurer his receipt or quietus therefor, and the treasurer shall deliver the said receipt or quietus to the person who shall have paid the sum or sums specified therein. *ib. ib. ib.*

TOWNS.

Inhabitants may petition for incorporation.

Duty of court.

Sec. 1. It shall be lawful for the inhabitants of any town or village within this territory, or two thirds of them, who are desirous to establish within the said town a police for their local government, or for the preservation and regulation of any commons. appertaining thereto, to present their petition for that purpose to the court of common pleas [circuit court] of the district [county] wherein such town or village is situated, stating therein the metes and bounds of the said town and commons; whereupon it shall be the duty of the said court after having ascertained that such petition or petitions were signed by at least two thirds of the taxable inhabitants residing within such town or village, to declare the said town or village in corporated under this act, and to order the metes and bounds, stated in such petition, to be surveyed and marked, and a plat thereof to be filed of record, in the clerks office: it shall also be the duty of the said court, to appoint two persons, inhabitants of such town, as commissioners to regulate and superintend the first election for five trustees, to be held in pursuanse of this act. *L. L. T. pt.* 1. *p.* 256, *pass'd* 18 *June*, 1808.

Elections.

Clerk of elections.

Comrs. to be judges.

Qualification of voters.

Polls how long kept open.

Who declared elected and how.

Notice to trustees elect.

Qualifications.

Contested elections how decided.

If election is set aside, new election.

Sec. 2. It shall be the duty of the commissioners to give, within ten days after their appointment, public notice by advertisement of the time and place where the election for trustees is to be held: *Provided,* That such notice shall not be given less than ten days nor longer than twenty days previous to the election; the commissioners shall appoint a clerk, who shall write down the names of all persons whose vote has been received. The commissoners shall be judges of election to be held by ballot; no person shall be entitled to vote except free white male inhabitants, above the age of twenty one years, who have resided within such town one year preceding such election, and whose names are to be found on the district [county] list of taxables. The election shall be kept open from ten of the clock in the forenoon, till five o'clock in the afternoon; each ticket shall contain the names of five persons for trustees; after the election is closed, the commissioners shall proceed to examine the tickets, and the five persons who have received the greatest number of votes, shall be, by the commissioners, declared to be elected as trustees, and a certificate thereof shall be filed within five days after the election with the clerk of the court; the commissioners shall give notice to each of the persons elected; every person elected as trustee shall be qualified in the same manner as is provided respecting the electors; contested elections shall be decided by the court of common pleas [circuit court] of the proper district [county], in a summary manner; and if such elections are set aside by the court, a new election shall be held, in the same manner as is herein before provided. The trustees elected by this act, shall remain in office for the space of one year, and until the succeeding trustees are duly qualified. *ib. p.* 256–7–8, *ib.*

Annual elections to be held & how.

Sec. 3. Every year on the same day that the first election was held, the inhabitants qualified as aforesaid, shall elect again five trustees in the same manner as is provided with respect to the first election, except that the duties to be performed by commissioners, shall be performed by any two of the trustees. *ib. p.* 258 *ib.*

Trustees to take oath. Elect a chairman. Time of meetings how fixed. What number deemed a quorum. May compell attendance. Rules of proceedings. Expulsion, how. Journal to be kept. Yeas & nays. Ordinance how passed.

Sec. 4. Every trustee before he enters on the duties of his office, shall take an oath or affirmation before any judge or justice of the peace well and truly to perform the duties of his office. The trustees or a majority of them, shall assemble within twenty days after the election and choose a chairman out of their number, and some other competent person to act as clerk; the board of trustees may hereafter fix the time of meeting or be convened by the chairman at any intermediate period, which he may conceive the public good requires their deliberations; a majority of the trustees shall be a quorum to do business; but a smaller number may adjourn from day to day; they may compel the attendance of absent members in such manner and under such penalties as they may by ordinance provide: they shall settle their rules of proceedings, and may, with the concurrence of four of the trustees, expel any member for disorderly behaviour or mal-conduct in office, but not a second time for the same offence; they shall keep a journal of their proceedings, and enter the yeas and nays on a question, resolve or ordinance, at the request of any member, and their deliberations shall be public. Every ordinance shall be passed by at least three of the board of trustees. *ib. ib. ib.*

Powers of board of trustees. Streets.

Sec. 5. The board of trustees as aforesaid shall have power and authority to pass bye-laws and ordinances to prevent and remove nuisances, to restrain or prohibit gambling; provide for licencing, regulating or restraining theatrical or other amusements within such town; to prevent or restrain the meeting of slaves; to regulate and establish markets; to erect and repair bridges; to cause the streets to be cleared and repaired by the inhabitants thereof: and if any of them shall refuse to clear or repair the part assigned to them, the trustees may hire the clearing and repairing of the same, and levy and collect, the price thereof on the persons so failing and refusing; to impose and appropriate fines, penalties and forfeitures, for breaches of their ordinances; to lay and collect taxes; to enact bye laws for the prevention and extinguishment of fire, to regulate the enclosures of any common field belonging to and within the limits of the said town; and to pass such bye-laws for the regulation of the place and common thereto appertaining, as they shall deem necessary, if not contradictory to the law of the

Fines, &c. imposed by board of trustees, how recovered.

land. All fines penalties and forfeitures imposed by the said trustees, if not exceeding twenty dollars shall be recovered by the chairman of the board or by a justice of the peace as debts not exceeding sixty dollars are by law recoverable; and if such fines, penalties and forfeitures exceed that sum, the same shall be recovered by action of debt, in the court of common pleas [circuit court] for the proper district [county] in the name of the trustees and for the use of the town. *ib. p.* 259–260, *ib.*

Chairman to publish bye laws, &c.
Tenure of office.

Vacancies how filled.

Sec. 6. It shall be the duty of the chairman of the board to publish the bye laws and ordinances of the board, for the information of the inhabitants, and cause the same to be carried into effect; he shall remain in office for the time for which he is elected a trustee, but in case of his absence at the meeting of the board, the board may appoint a chairman pro tempore. Vacancies that may arise, by the death, resignation or removal out of the limits of the town, of any trustee, shall be filled by a special election, ordered by the chairman of the board, after ten days public notice thereof given. *ib. p.* 260 *ib.*

Power and duties of collector of town tax.

Notice of sales for tax.
Restrictions of the powers of trustees.

Sec. 7. The persons appointed to collect any tax imposed by virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the persons chargeable therewith; no sale shall be made unless ten days previous notice thereof be given. No law shall be passed by the board, subjecting vacant or improved lots or pieces of ground to be sold for taxes; no tax shall be imposed by the board on real or personal property in the said towns, at a higher rate than one half of one per centum, on the assessment valuation of such property in any one year. *ib. ib. ib.*

Chairman of trustees of, &c. to publish an account of receipts and expenditures.

Every six months.
Penalty on failure.

Sec. 8. The chairman of each board of trustees of the towns of St. Louis and St. Genevieve, shall on or before the first day of March next, cause to be published in the Missouri Gazette a correct statement of all monies received and disbursed for the use and benefit of either of the towns since the same have been incorporated, which statement shall be published in the French and English languages, and a like statement shall be made and published by the trustees every six months thereafter, and if the chairman of either board of trustees for the said towns shall at any time neglect to make and cause to be published a statement as afore-

How recovered.

said, according to the provisions of this act, he shall forfeit and pay for every such neglect, the sum of fifty dollars, to be recovered by action of debt in any court of record in this territory, having competent jurisdiction, one half whereof shall be to and for the use of the said corporation. and the other half to the use of any person who will sue for the same. *L. M. T. Dec. sess.* 1813, *p.* 63–64, *pass'd Jan.* 15*th*, 1814.

Chairman may commence suits against defaulting officers.

Sec. 9. The chairman of each board of trustees shall be authorised to commence suit in his own name as such, against any person who may have been an officer of the said corporation, and who detains in his hands money belonging to the same, which suit may be commenced and carried on to final judgment and execution in any court having competent jurisdiction thereof. *ib. ib. ib.*

TOWNSHIPS.

Counties to be laid off into townships.

Sec. 1. The inhabited parts, of each district [county,] within this territory, shall be laid out into convenient townships. And it shall be the duty of the commissioners* of the respective districts [counties] or any two of them to meet on or before the first day of September next, at their usual place of meeting and to continue from day to day till they have laid out their districts [counties] into convenient townships, designating each township by a particular name; they shall within thirty days thereafter transmit to the governor a duplicate return containing the name and description of the bounds of each township, and the number of taxable inhabitants residing in each, (to be taken from the last assessors' return) and also file with the clerk of the court of common pleas [circuit court] another duplicate to be entered by him on record. *L. L. T. pt.* 1. *p.* 165–6, *pass'd 4th July,* 1807.

To be named. Return to be made.

Line not to run through town or common. Number of townships.

Sec. 2. No township line shall pass through any town or common field, thereto belonging but the whole of such town and common field shall be part of one township. And the number of townships to be laid out in the first instance, shall not in any one district [county] exceed six. *ib. p.* 166, *ib.*

New townships how laid off.

Sec. 3. It shall be the duty of the district [county] commissioners [circuit court]* from time to time, when in their opinion the increasing population in any part of any district [county] shall render it expedient and convenient, to establish one or more new townships or to subdivide townships already established. In all which cases they shall transmit duplicates thereof within two months thereafter to the governor, and to the clerk, in the same manner as is directed in the first section of this act. *ib. ib. ib.*

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* *Circuit Courts, see sec.* 4.

Returns.

Sec. 4. The court of common pleas [circuit court] in their respective districts [counties] shall exercise all and singular the duties heretofore required from the commissioners by the act to which this act is a supplement.† *ib. pt. 2, p. 5. pass'd Oct. 25th,* 1810.

Circuit court to do duty of commissioners under this head.

TRESPASSES.

Sec. 1. If any person shall cut down, injure or destroy, or carry away, any tree or trees whatever, placed or growing for use, shade or ornament or any timber, wood or underwood, standing, laying or growing on the land of any other person, or shall dig up, quarry or carry away stones, ore, or mineral, gravel, clay, turf or mould, roots, fruits or plants, or cut down or carry away any grafts, grain, corn, flax or hemp, in which he hath no interest or right, standing, laying or being on any land not his own, or shall knowingly break the glass or any part of it, in any building not his own; or injure or destroy any building not his own, the person so trespassing or offending shall forfeit and pay the party injured, treeble the amount of the thing so damaged, broken, destroyed or carried away together with costs of suit; And if any person shall voluntarily throw down or open any doors, bars, gates or fences and leave the same open or down, other than those which lead into his own enclosure, the person so offending, shall forfeit and pay to the party injured, the sum of five dollars, and also double the amount of the damage the party shall sustain by reason or in consequence of such doors, bars, gates or fences having been thrown down or opened as aforesaid, together with costs of suit. *L. M. T. Dec. sess.* 1816. *p.* 76, *pass'd 30th Jan. in force 1st May* 1817.

Trespasses as to trees.

As to stone, mineral, gravel, clay, turf, mould, grafts, grain, corn, flax, hemp, &c.

As to buildings.

Damages.

As to doors, gates, fences, &c.

Damages.

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* *See sec.* 4.

† *Sections* 1, 2 & 3.

How recovered.

Before a justice.

Before a court of record.

Sec. 2. All penalties contained in the first section of this act, shall be recoverable, with costs of suit, by action of debt, founded on this statute brought before any justice of the peace of the township where the defendant resides, when the damages demanded shall not exceed the sum of twenty dollars, saving to either party the right of appeal, under the same regulations and restrictions that are contained in the seventh section of an act defining the powers and duties of justices of the peace in matters of a civil nature.* And when the sum demanded shall exceed twenty dollars, the plantiff may bring an action of trespass, in any court of record having jurisdiction of the same; *Provided always*, That if in any action instituted before a justice of the peace as aforesaid, the defendant shall set a title to the land on which any of the trespasses mentioned in the first section of this act, are alledged to have been committed, the justice shall forthwith order the defendant to give good and security sufficient by recognizance to be taken and acknowledged before such justice and approved of by him, in a sum sufficient to cover the amount of the penalty or penalties sued for with costs, to prosecute with effect his claim or title to the said land, within one year thereafter or to appear and defend the action to be instituted against him, her or them within one year thereafter, by virtue of the provisions herein contained in any court of record, within this territory having cognizance thereof; And in either case, to abide by and satisfy the judgment of the court, then the said justice shall proceed no further in the said cause, but forthwith dismiss the parties, and it shall be the duty of said justice, thereupon to tax the costs that may have accrued before him, and as soon as the action shall be renewed or instituted for the purpose aforesaid to transmit the said bill of costs, together with the recognizance so by him taken as aforesaid, to the clerk of the court in which such action shall be instituted or renewed, which costs so taxed and transmitted shall be made a part of the judgment to be rendered as aforesaid; *Provided nevertheless*, That if judgment shall be obtained in said court by the party in whose favor such recognizance was taken, such judgment shall be for the amount of the penalty or penalties incurred: and provided also, that on the trial of any action, whether of debt or trespass brought on this statute, if it shall appear that the defendant had probable cause to believe that the land on which the trespass is alledged to have been committed, or that the thing so taken, carried away, injured or destroyed, was his own, then in that case, the plantiff in the action shall recover single damages only, together with costs of suit. *ib. ib. ib.*

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* *See small debts, sec. 16.*

Forfeiture of recognizance.

Sec. 3. If the said recognizance shall become forfeited for not prosecuting as aforesaid, the justice shall proceed to enter judgment against the defendant or defendants, for the demand of the plaintiff, with costs, which shall in such case be deemed and taken to be confessed, and shall issue execution thereupon against the said defendant or defendants, his, her or their security or securities. And if the said recognizance shall be forfeited for not appearing to and defending, or for not abiding by and satisfying the judgmnt that shall or may be given in the said court of record, the party for whose benefit such recognizance was taken, may by writ or writs of *scire facias*, to be issued from such court of record, proceed to judgement and execution thereon against such defendant or defendants, his, her or their security or securities. *ib. p, 78. ib.*

Scire facias.

Masters answerable for trespasses of their slaves.

Sec. 4. If the slave of any person in this territory, shall commit any of the trespasses or offences contained in the first section of this act—it shall and may be lawful for the person injured to bring an action for the recovery of any of the penalties herein before contained against the master or mistress of such slave, under the same regulations and restrictions as are in this act heretofore provided for the recovery of any of the foregoing penalties: *Provided* that if such slave at the time of committing such trespass, shall be in the employ or hire of another person, other than his real master or mistress, such person so employing or hiring such slaves, shall be accountable for all trespasses such slave shall commit whilst so employed or hired, in the same manner that the real master or mistress is made accountable by this act for the trespass of his slave. *ib. p. 79. ib.*

Defendant to plead general issue.

Sec. 5. In all actions founded on this statute, it shall be lawful for the defendant to plead the general issue, and give any special matter in evidence, giving the plaintiff notice in writing, at the time he pleads the general issue, of the points of the special matter which he means to give in evidence. *ib. ib. ib.*

USURPATION.

See Crimes and Misdemeanours, sec. 24.

VAGRANTS,

Who deemed

Sec. 1. Every able bodied person who is found loitering or rambling about, not having wherewith to maintain himself by some visible property, and who doth not betake himself to labour or some honest calling to procure a livelihood, and all persons who may be found begging, and who quit their habitations and leave wives or children without means of subsistence whereby the suffer or become chargeable to the county and all keepers or exhibiters of either of the gaming tables called A. B. C. or D. E. tables or of a faro bank, device or any other table or bank of any kind under any denomination whatever, and all other idle, vagrant and dissolute persons rambling about without any reasonable means of subsistence shall be deemed and treated as vagrants. *L. M. T. Dec. sess.* 1814. *p.* 41 *pass'd Jan. 3d. in force, 1st Mar.* 1815.

Duty of justice.

To commit to jail or take recognizance.

Sec. 2. Where any such person is found within any county, and justice of the county shall upon information or from his own knowledge, issue his own warrant to the sheriff or constable to bring such person before him and if upon due examination it shall appear to the said justice that he is within the description of vagrants agreeable to this act, he shall commit him to the jail of the county until the next county [circuit] court, unless he enter into a recognizance in the sum of twenty five dollars with sufficient security in the same sum, where such person may be taken up under this act for any thing else than keeping, exhibiting for the purpose of gambling at or on any of the tables or banks mentioned in the first section of this act, and if apprehended for this last mentioned offence, then in the sum of not less than fifty dollars nor more than five hundred dollars, to be adjudged by the justice, for his appearance before the said court and there to abide the determination of the same. If upon examination it appears to the court that such person is within the description of vagrants and is a minor they shall direct the sheriff to bind him apprentice to some person of a useful trade or occupation until he arrive at the age of twenty one years, and if such apprentice run away from his master he shall be dealt with as other apprentices who leave their mas-

Court how to proceed.

If he be a minor to bind him apprentice.

ters before their apprenticeship expires, but if such vagrant be above the age of twenty one years, the court shall direct the sheriff to hire him to the highest bidder for the best price that can be had, for any time or term not exceeding three months: *Provided however*, That no person whatever shall be bound or hired for any term unless it is ascertained, by the verdict of a jury sworn and empannelled for that purpose, that such person is a vagrant within the description of this act; and any person who shall hire such vagrant may exercise the same power over him as masters are allowed by law over indented servants: *Provided however*, if such vagrant shall have a wife and children within the county he may be set at liberty, at the discretion of the court, upon his entering into bond in any sum not less than fifty dollars nor more than two hundred dollars with sufficient security, to be adjudged of by the court, payable to the governor and his successors, to return to his wife and family and follow some lawful calling for their support and maintenance. But if the wife and family of such vagrant live in any other county, the court shall direct the sheriff or constable to convey him to the county in which his wife and family reside and deliver him to some justice of the peace for such county to be dealt with as is hereby directed. *ib. p.* 41-2-3 *ib.*

If above 21 years to be hired, &c.

No person to be hired or bound unless he be found to be a vagrant by a jury: Master's authority over hired vagrant. Proceedings where vagrant has a family.

If family be in another county.

Sec. 3. When no person will hire a vagrant who shall be deemed such by a jury empannelled and sworn for that purpose, or will not take him only by furnishing such necessary diet and cloathing as he may stand in need of during his servitude, the court shall order such vagrant any number of lashes on his bare back, not exceeding twenty five and the sheriff shall see the same executed accordingly. *ib. p.* 43. *ib.*

Vagrant may *be whipped* if no person will hire him, &c.

Sec. 4. Money arising from the hire of any vagrant shall be applied by the court, after paying the costs, to the paying his debts; but if he shall not be indebted, or do not owe to the amount of his hire; the same or the balance thereof shall be paid to such vagrant at the expiration of such time of service, unless he has a wife or children in which case it shall be applied to their use. *ib. ib. ib.*

Hire of vagrants how disposed of.

Sec. 5. Where any vagrant shall have entered into bond and security as aforesaid, such bond shall be lodged with the clerk of the county [circuit] court, and, should the penalty be forfeited, the court shall direct an execution to issue thereupon against the goods and

Vagrant's bonds where deposited.

Penalty forfeited, how recovered.

How appropriated.

chattels, lands and tenements of such vagrant and his securities, for the amount of the sum for which they are bound, and the sheriff shall make distress and sell the same in like manner as on other executions, and the money arising therefrom shall be applied towards lessening the county levy and be accounted for and paid in the same manner, and the clerk, sheriff and constable shall receive the same fees for performing the duties enjoined on them by this act as they are severally entitled to for services of a similar nature to be paid by the court out of the county levy. *ib. p.* 44 *ib.*

Justices, sheriffs and constables to take notice of vagrants.

Grand juries to take notice and make presentment of vagrants.

Proceedings in each case.

Gambling tables to be destroyed by warrant from J. P.

Sec. 6. All justices within this territory shall see this act executed and all sheriffs and constables within the several counties of this territory shall give information to some justice of the peace of all vagrants that may be within their knowledge, in their respective counties or such other disorderly or wandering persons who are lurking about without any visible means of maintenance, as they may suspect to come under such description, and grand juries empannelled for any county shall make presentment of all such persons within the county as they may suspect to be vagrants agreeably to this act. And upon any such presentment the court shall direct some justice to issue his warrant to bring such suspected person or persons before him. And if upon examination it appears to him that they come within the description of vagrants, the same steps shall be taken with such vagrants as are heretofore directed. And it shall be the duty of any justice of the county wherein there may be found any table commonly called **A. B. C.** or **E. O.** table or tables of the like kind or description to issue his warrant to the sheriff or constable to have such table burned or otherwise destroyed. *ib. ib. ib.*

Charge to G. Juries.

Sec. 7. It shall be the duty of the superior and circuit courts respectively to give this act in charge to the grand jury at each and every term of either of the said courts. *ib. p.* 45. *ib.*

VICE AND IMMORALITY.

Sabbath breaking.

By labour, &c.

Sec. 1. If any person or persons on the Lord's day, commonly called Sabbath or Sunday shall be found labouring, or shall compel his, her or their apprentice or apprentices, servant or servants, slave or slaves, or the apprentice or apprentices, servant or servants, slave or slaves of any other person or persons, to labour or perform other services, unless it be the ordinary household offices of daily necessity or charity, he, she or they so offending being thereof duly convicted, shall forfeit and pay the sum of one dollar for every offence, deeming every apprentice, servant or slave so compelled as constituting a distinct offence: *Provided*, That no person who is a member of any religious society who observes as a sabbath any other day of the week than sunday or the christain sabbath, shall be liable to the penalty hereby incurred for a breach of the sabbath so that they observe one day in the seven, agreeable to the regulations aforesaid, saving to ferrymen the right of crossing passengers. *L. M. T. Dec. sess.* 1813. *p.* 30. *pass'd Jan. 8th, in force* 1st *March*, 1814.

Unless labor of necessity.

Fined.

Exceptions in favor of certain persons.

Saving to ferrymen.

Sec. 2. If any person or persons shall wilfully, maliciously or contemptuously disquiet or disturb any congregation assembled in any church or other place for religious worship, by profanely swearing or using indecent gestures, threatening language or commit violence of any kind, to or upon any person or persons then and there assembled for the purposes aforesaid, he, she, or they so offending herein, shall be fined in any sum not exceeding one hundred dollars, nor less than one dollar, at the discretion of the court before whom the conviction is had. *ib. ib. ib.*

Disturbing religious congregation.

Fine.

Sec. 3. If any person or persons shall set up or keep any table or tables, commonly called A B C, Faro bank, E O, Roulette, Equality, or any other kind of gaming table or tables, at which any game of chance shall be played for money or property; or shall keep any bank as aforesaid, and induce or permit any person or persons to bet against said bank, any person or persons so offending, being thereof convicted, shall be fined in any sum not exceeding five hundred dollars, nor less than fifty dollars at the discretion of the court before whom the conviction is had, and the person so convicted shall stand committed till the sentence of the court be complied with. *ib. p.* 31 *ib.*

Gaming tables prohibited.

Keepers fined.

Sec. 4. If any person or persons shall, at any time win, lose or bet in money, goods or chattels on any of the games played at the tables named in the third section of this act, or at any kind of gambling table or device whatever, every such person offending shall forfeit and pay the sum of five dollars, and the value of the

Persons betting at prohibited games,

Fined.

money, goods and chattels, so won, lost or bet as aforesaid. *ib. ib. ib.*

Contracts, promises, notes and other writings given for money won, declared void.

Sec. 5. All contracts, promises, notes, bills, bonds and other assurances, and all mortgages, deeds or conveyances made or entered into, by any person or persons whomsoever, in which the consideration for the same shall be for any money, goods or chattels won on any of the aforesaid tables, banks or games, be and they are hereby declared to be utterly null and void in law, to all intents and purposes. *ib. p.* 32, *ib.*

Persons permitting prohibited games to be played in his house, &c.

Sec. 6. Any person or persons who shall suffer any of the games played at the tables named in the third section of this act, or any kind of gaming table or gambling device, at which any game of chance is played or money or property won or lost, in his or her house, shed, out house, barn, stable, booth or other place, of which he or she hath at that time the use or possession, he, she or they so offending, shall, for every such offence, forfeit a sum not exceeding five hundred dollars nor less than fifty dollars, at the discretion of the court before whom the conviction is had; and the person so convicted shall stand committed till the sentence of the court is complied with. *ib. ib. ib.*

Fined.

To stand committed till the fine is paid.

Duelling, challenging and bearing challenges, &c.

Sec. 7. If any person shall challenge another to fight a duel or shall accept of a challenge to fight a duel or shall knowingly be the bearer of a challenge for the purpose aforesaid or shall be a second to any person that fights a duel, or shall aid, assist or promote any duel, every such person offending, upon conviction thereof, shall forfeit and pay a sum not exceeding two hundred dollars, and shall moreover be rendered incapable of holding any office of profit or trust in the territory or of voting at an election within the same. *ib. ib. ib.*

Penalty.

Disenfranchisement.

Fines and penalties, how recovered.

Sec. 8. All the fines and penalties, imposed by virtue of this act, may be recovered with costs by indictment before any court having competent jurisdiction, one half for the benefit of the prosecutor, and the other half for the use of the county wherein the offence may have been committed. *ib. p.* 33. *ib.*

WASHINGTON COUNTY.

See Counties, sec. 4.

Sec. 1. The several courts of common pleas [circuit courts] within this territory, shall provide for their respective counties, and at the expense of their said counties, one measure of one foot or twelve inches, English measure so called: also one measure of three feet or thirty six inches English measure as aforesaid, to be denominated one yard: also one half bushel measure, which shall contain one thousand seventy five and one fifth solid inches, to be denominated dry measure; also one gallon measure, which shall contain two hundred and thirty one solid inches; one half gallon measure which shall contain one hundred and fifteen and one half solid inches, and one quart measure which shall contain fifty seven and three fourths solid inches, which measures are to be of wood or any metal the court shall think proper: Also one set of weights commonly called avoirdupois weights, and one seal with the initial of the county inscribed thereon; which measures, weights and seal shall be kept by the clerk of the court of common pleas [circuit court] in each county for the purposes of trying and sealing the measures and weights used in their counties. *L. M. T. July sess.* 1813, *p.* 15, *pass'd July* 28*th, in force* 1*st. Oct.* 1813.

Standard to be procured by Circuit court.

Foot.

Yard.

Half bushel.

Gallon.

Half gallon.

Quart.

Weights.

Seal.

To be kept by clerk.

Sec. 2. As soon as the courts shall have furnished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court house door for two months. And any person or who will knowingly keep any measures or weights, and buy or sell any commodity whatsoever by such measures or weights as shall not correspond with the measures and weights deposited in the clerks office, shall for every such offence, being lawfully convicted thereof, forfeit and pay a sum not exceeding forty dollars, nor less than five dollars, for the use of the county where such offence shall have been committed, and also the costs of suit to be recovered before any justice of the peace of said county: *Provided always,* That all contracts or obligations whatsoever, made previous to the taking effect of this act, shall be settled, paid and executed agreeably to the weights and measures in common use, at the time the said contracts or obligations were made or entered into. *ib. ib. ib.*

Notice to be given when procured.

Persons using other weights and measures.

Penalty.

How recovered and appropriated.

Proviso in favor of contracts, &c. heretofore made.

Sec. 3. All persons desirous of having their weights and measures tried by the county standard, shall apply to the clerk of the county, and if he finds them corres-

Persons wishing to regulate their weights and measures how to proceed. pond with the county standard, shall seal them with the seal provided for that purpose. *ib. p.* 16, *ib.*

WILLS AND TESTAMENTS.

Who may make a will. Sec. 1. Every person aged twenty one years or upwards being of sound and disposing mind, and not a married woman (unless by marriage settlement or special authority of the husband power is given to make a will) which power shall be in writing, and executed before the marriage entered into, shall have power, at his or her will and pleasure, by last will and testament in writing, to devise all his or her estate, right, title Of What. and interest in possession, reversion or remainder which he or she has at the time of his or her death shall have of or in and to lands, tenements, hereditaments, annuities or rents charged upon or issuing out of them, or slaves, and also to bequeath all his or their personal estate, so that such will and testament be How to be executed. signed by the testator or testatrix, or by some other person in his or her presence and by his or her direction, and moreover such will and testament shall be at- How attested. tested by two or more competent witnesses subscribing their names to such will and testament in the presence of each other and in the presence of the testator or tes- Widow's dower saved. tatrix, saving to the widow of such testator her legal rights to dower* in such land and tenements, rents and annuities, which shall not be prejudiced by any devise thereof. *L. M. T. Dec. sess.* 1814, *p.* 130, *pass'd* 21*st Jan.* 1815.

Persons above 18 years old may make a will of goods and chattels. Sec. 2. Any person above the age of eighteen years, being of sound and disposing mind shall be capable of disposing of his or her goods and chattels by will, so that such will be executed in the same manner as is prescribed in the foregoing section. *ib. p.* 131, *ib.*

Revocation. Sec. 3. No will in writing or any devise therein shall be revoked by any subsequent will, codical or declaration unless the same be in writing and executed in the same manner that is provided with respect to wills and testaments; and no devise so made or any clause thereof shall be revocable but by the testator or testatrix destroying, cancelling or obliterating the same; or causing it to be done in his or her presence, by a subsequent will, codical or declaration in writing as aforesaid. *ib. ib. ib.*

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* *See descents and distribution.*

Sec. 4. When any person shall make his or her last will and testament and omits to mention the name of any child or children, if living, or the legal representatives of such child or children, or afterwards shall marry or have a child or children not provided for in such will, and die leaving a widow and child, or either widow or child, although such child be born after the death of the father, every such person, so far as shall regard the widow or such child or children, shall be deemed to die intestate; and such child or children shall be entitled to such proportion, share and dividend of the estate real and personal of the deceased, as if he or she had actually died without will; towards raising which proportion, the devisees and legatees shall contribute proportionally out of the part devised or bequeathed to them by the same will and testament, and the circuit court shall have power to order and decree a distribution of such estate according to the true meaning of this act. And if the devisees or legatees shall refuse to pay the same, the said party for the recovery thereof, may have a *scire facias* against them for the same, on the return of which it shall be the duty of the court to enter judgment against such devisee or legatee and issue execution for the same. *ib. p.* 131 *ib.*

Children omitted in a will, born after its execution, and posthumous children.

Will void as to them

Devisees and legatees to contribute proportionably.

How compelled.

Sec. 5. No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his habitation or where he resided ten days next preceding; except when the deceased is taken sick from home, and dies before he returns to his habitation; or when the value exceeds the sum of two hundred dollars, and unless it be proved by two witnesses that the testator called on some person present to take notice or bear testimony that such is his will, or words to the like import. And after six months past, after speaking the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony or the substance thereof, were committed to writing within thirty days after the making the said will, either by one of the witnesses to said will, or by some person at his or her direction. *ib. p.* 132, *ib.*

Nuncupative wills.

Sec. 6. No letters testamentary or probate of any nuncupative will shall be granted by the court until at least fourteen days after the death of the testator be fully expired, nor shall any nuncupative will be at any

Probate of nuncupative wills.

any time received to be proved, unless the substance thereof be first committed to writing, and a citation be issued thereon, accompanied with a copy thereof, to call the widow or next of kin of the deceased to the end that they may contest the same if they please. *ib. p.* 133, *ib.*

Proviso in favor of mariners and soldiers.

Sec. 7. *Provided however*, That any mariner, or person being at sea, or soldier being in actual military service, may dispose of his moveables, wages, and personal estate as he could or might have done by common law, or by having reduced the same to writing. *ib. ib. ib.*

Probate of wills, when.

Certificate to issue.

Petition to invalidate to be filed 5 years after probate.

How tried.

Saving to infants, feme covert, insane & absent persons.

Sec. 8.[*] When any will shall be exhibited to be proved, the court having jurisdiction thereof or the clerk of the said court in vacation, subject to the revision of the said court, may immediately receive proof thereof and grant a certificate of such probate ;[†] or if such will is rejected shall grant a certificate of such rejection. If however any person interested shall within five years afterwards appear, and by his petition to the superior court of the proper county, contest the validity of any will proved, or shall pray to have any will proved which has been rejected, an issue shall be made up whether the writing produced be the will of the testator or not ; which issue shall be tried in the superior court by a jury, if either party require it, or by the court ; and the verdict of the jury or the judgment of the court shall be final, saving to the court the power of granting a new trial for good causes as in other cases. But no such party appearing within that time, the probate or rejection of such will shall be forever binding ; saving to infants and married women, and persons absent from the United States or territories during the whole of said five years, or of unsound mind a like period after the removal of their respective disabilities. *ib. p.* 134, *ib.*

Commissions to take testimony may issue in certain cases.

To whom directed.

Sec. 9. The circuit court or the clerk in vacation, subject to the revision of the court, when any will shall be produced to them for probate, and any witnesses to the same shall be prevented by sickness to attend, or resides out of the territory, or more than sixty miles from the place where such will is to be proved, may issue a commission annexed to such will, and directed to any judge of any court of law, or justice of the peace, or mayor or other chief magistrate, empowering him to take and to certify such witnesses' attestation; and if such witness shall appear before such magistrate and make oath or affirmation that the testator signed and published the writing, annexed to such commission, as his last will and testament, or that some other person signed it by his direction, that he was of sound and disposing mind, that the witness subscribed his name thereto in the presence of such testator and at his request, and in the presence of the other subscribing witnesses and the testimony so taken shall have the same force as if it had been made before the court which issued the commission. *ib. ib. ib.*

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[*] *By whom, how and where probate to be granted, see title administration, sec.* 1 *to* 11.

[†] *Qualification of executors, see administration sec.* 3. *Powers of executors before probate, ib. sec.* 14.

How proceeded on, and proof to be taken.

Effect of testimony so taken

Sec. 10. Authenticated copies of wills proved according to the laws of any of the United States, or territories, or country where the same is made, with the probate thereof annexed or endorsed, being transmitted into this territory under the public or common seal of the court or office, where the same have been granted and recorded, shall be good and available in law for the granting, conveying and assuring of the lands and tenements thereby given or demised [*devised,*] as well as the goods and chattles thereby bequeathed. And the copies made as aforesaid other than copies or probate of such wills as shall appear to be annulled or disapproved, shall be judged and deemed, and are hereby declared matter of record, and shall be good evidence to prove the gift or devise so made thereby. All such probates as well as letters testamentary or administration granted out of this territory being produced here, under the seal of the court or office granting the same, shall be sufficient to enable the executors or administrators, by themselves or attornies, to bring their action in any court within this territory, as if the said probate or letters testamentary or administration were granted here, and produced under the seal of any court of this territory having power to grant the same: *Provided,* That any of the wills whereof copies or probate shall be produced and given in evidence as aforesaid, may be contested, disproved and annulled, within the same period and in the same manner as provided heretofore by this act respecting wills proven in this territory. *ib. p.* 135-6. *ib.*

Authenticated copies of wills made out of the territory.

Deemed good and valid, &c.

Deemed matter of record and good evidence.

Probates, letters, &c. good evidence.

Wills may be contested as other wills.

Sec. 11. In trials respecting the validity of a will, the

Evidence on

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trial of validity of wills.

oath of the witness if reduced to writing at the time of taking such oath, at the time of the first probate shall be admitted in evidence to have such weight as the court or jury shall think it deserves. *ib. ib. p.* 136.

Construction of wills.

Sec. 12. The judges of the respective courts and all others concerned in the execution of any last will and testament shall have due regard to the direction of the will and the true intent and meaning of the testator in all matters and things that shall be brought before them concerning the same. *ib. p.* 143–4. *ib.*

WITNESSES.

See Justices of the Peace sec. 3. *Judicial Proceedings sec.* 37 *to* 43; *and Small Debts sec.* 11.

WOLVES, PANTHERS AND WILD CATS.

Premium for killing.

Rates,

Sec. 1. If any person shall kill any wolf, panther or wild cat, in any county of this territory after the first day of March next and within ten miles of any settlement therein, he shall be entitled to and receive if said wolf or panther shall exceed the age of six months, the sum of two dollars, if under that age the sum of one dollar and fifty cents for every wild cat, to be paid out of the county treasury in which the said wolf, panther or wild cat shall have been killed. *Dec. sess.* 1816. *p.* 6. *pass'd Dec.* 23*d.* 1816.

Scalps to be exhibited,

and examined.

Certificate.

Sec. 2. Any person killing a wolf, panther or wild cat as aforesaid, shall exhibit the scalp with both ears, of such wolf, panther or wild cat, to some justice of the peace within said county, within ten days after killing the same, and such justice shall strictly examine such person on oath, or any other person being a competent witness, touching the time when, and place where and how such scalp was obtained and whether the wolf, panther or wild cat, to which such scalp belonged, was taken and killed within the county, and within ten miles of some settlement thereof; and when such justice shall be satisfied that the person exhibiting such scalp, is entitled to any of the above mentioned premiums, he shall give such person a certificate on the county treasury for the same, and such justice shall burn or destroy all such scalps for which he has given a certificate, and shall be the judge of what age the said wolf or panther may have been when killed; and such justice of the peace shall be entitled to receive from the party applying for administering the oath and granting a certificate in pursuance of this act, the sum of twenty five cents. *ib. ib. ib.*

Fee.

Master to receive for the slave.

Sec. 3. If the slave of any person shall kill any wolf, panther or wild cat, it shall and may be lawful for the master or employer of such slave by exhibiting the scalp, and making proof before a justice of the peace that the said wolf, panther or wild cat was killed agreeably to the provisions of this act, in that case the master or employer shall be entitled to the premium in the same manner as if such wolf, panther or wild cat had been killed by such master or employer. *ib. p.* 7 *ib.*

Forfeiture for taking these animals from the trap of another.

Sec. 4. If any person shall take away any wolf, panther or wild cat out of any pit or trap, made or set to catch the same, thereby to cheat or defraud the owner of such pit or trap of his premium, such person taking away as aforesaid shall forfeit and pay to the owner of such pit or trap the sum of four dollars for every wolf, panther or wild cat taken out as aforesaid, with costs of suit to be recovered before any justice of the peace of the proper county by an action of debt founded on this statute. *ib. ib. ib.*

Form of certificate.

Sec. 5. The certificate to be given by the justice as near as circumstances will admit shall be in the form following, to wit: territory of Missouri, county of sct. I A. B. a justice of the peace within and for the county aforesaid, do hereby certify, that the sum of is due to C. D. as a premium for his killing a wolf, panther or wild cat (as the case may be) and the treasurer of the county is hereby directed to pay the same to C. D. or bearer. Given under my hand this day of A. D. A. B. justice of the peace. *ib. p.* 8. *ib.*

Certificate to be legal tender for county taxes.

Sec. 6. Any certificate obtained for the killing of a wolf, panther or wild cat as aforesaid, shall be a legal tender for any county taxes levied within said county, and shall be received by the sheriff or other person collecting any county levy within the same. *ib. ib. ib.*

WOODS, MARSHES AND PRAIRIES.

Persons firing woods, &c. to be fined.

Sec. 1. Whosoever shall at any time, wilfully set on fire any woods, marshes or prairies whatsoever, within this territory, so as to occasion any loss, damage or injury to any other person, every person so offending, and being thereof legally convicted, in the court of quarter sessions of the district where the offence is committed, shall pay a fine not exceeding three hundred dollars and not less than fifty dollars, the one half of such fine to be paid to the prosecutor, and the other half to the district treasurer for the use of the district. *L. L. T. pt.* 1. *p.* 301 *pass'd 2d. Nov.* 1808. *in force* 1st *Jan.* 1809.

How recovered and appropriated.

Offender to pay private damages.

Sec. 2. Every person so offending as thereby to occasion any loss, damage, or injury to any other person, shall be and is hereby declared liable to make satisfaction for the same in an action or actions on the case, to to be brought by the party grieved, in any court of record within this territory having competent jurisdiction. *ib. p.* 302. *ib.*

Whendemand is not above $20, tried by a justice.

Mode of procedure.

Sec. 3. When any party is injured, and shall not demand above twenty dollars for his loss or damages, it shall and may be lawful for such person to apply to any justice of the peace of the district where the offence is committed, who is hereby empowered and required by his warrant to cause the party offending to be brought before him, or some other justice of the peace of the same district, and if, upon examination, it shall appear to the justice by the testimony of one or more credible persons, that the defendant is guilty of the charge exhibited against him then the said justice shall issue his warrant to three house-holders of the township, commanding them in the presence of the defendant, if he will be present, to view the place or thing damaged, or enquire into the loss sustained by the plaintiff and to certify to the said justice upon their oath or affirmation, what damage in their judgment the plaintiff has sustained by occasion of the premises, and upon the return of such certificate to the said justice, he is hereby directed to grant execution for the recovery of the said damages, together with costs of prosecution, as is usual in the recovery of debts under twenty dollars. *ib. ib. ib.*

Proviso.

Setting on fire without damage.

Sec. 4. Nothing in this act shall be construed so as to prevent any person or persons from setting on fire any rubbish, leaves, or brush, or prairies, on his, her or their farms or plantations, as often as occasion may require, if the same be done without setting on fire the adjacent woods or prairies. And whensoever any person shall wilfully set on fire any woods, marshes, or prairies, every person so offending shall be fined not exceeding one hundred dollars, although no private injury should ensue. *ib. p.* 303. *ib,*

Master responsible for offences of slave, under this act.

Sec. 5. Where any offence shall be committed against this act, by any slave or servant without the knowledge or consent of the master or mistress, the master or mistress shall be responsible to the full extent of their interest in such servant or slave and no further. *ib. ib. ib.*

SPANISH REGULATIONS,

FOR THE

ALLOTMENT OF LANDS.

(No. I.)

Instructions of Governor Gayoso, for the administration of Posts and the Distribution of Lands.

INSTRUCTIONS to be observed by the commandants of the posts in this province, for the admission of new settlers:

1. If the new settler comes from another post in the province, where he has obtained a grant of land, no other grant shall be made to him; and if he undertakes to fix himself down, he must buy lands, or produce my special permission for the grant; and in order to determine whether he has before obtained land or not, the commandant of the post from which he goes, shall express it in his passport.

2. If the new settler is a stranger, and is not a farmer, nor married, nor has property in negroes, merchandize or money, he shall have no right to solicit a grant of lands, until he has remained four years, conducting himself well, in some honest and useful occupation.

3. Artisans shall be fully protected, but no land shall be granted to them, until they have acquired property, and have lived three years in the exercise of their art or profession.

4. To no unmarried emigrant who has not a trade or profession, shall lands be granted, till after the expiration of four years; and then only on his shewing that he has been without interruption, honestly employed in the cultivation of the earth, without which necessary circumstance, he shall not be entitled to a grant.

5. If any person, as described in the last article, after having lived in the country two years, shall obtain a recommendation from a farmer of honesty, who shall be willing, from his industry and application, to give him his daughter in marriage, as soon as the marriage is accomplished in due form, he shall be entitled to receive a grant of land, agreeably to the terms contained in this instruction.

6. The privilege of enjoying liberty of conscience, is not to extend beyond the first generation. The children of those who enjoy it, must positively be Catholics. Those who will not conform to this rule, are not to be admitted; but are to be sent back out of the province immediately, even though they possess much property.

7. In the Illinois, none shall be admitted but Catholics of the classes of farmers and artisans. They must also possess some property, and must not have served in any public character, in the country from whence they come. The provisions of the preceding article, shall be explained to the emigrants already established in the province, who are not Catholics, and shall be observed by them; the not having done it until this time, being an omission, and contrary to the orders of his majesty, which required it from the beginning.

8. The commandants will take particular care, that no Protestant preacher, or one of any sect other than the Catholic, shall introduce himself into the province: The least neglect in this respect, will be a subject of great reprehension.

9. To every new settler, answering the foregoing description, and married, there shall be granted two hundred arpens of land; fifty arpens shall be added for every child he shall bring with him.

10. To every emigrant possessing property, and uniting the circumstances before mentioned, who shall arrive with an intention to establish himself, there shall be granted two hundred arpens of land; and in addition, twenty arpens for every negro that he shall bring; provided however, that the grant shall never exceed eight hundred arpens to one proprietor. If he has such a number of negroes, as would entitle him at the above rate to a larger grant, he will also possess the means of purchasing more than that quantity of land, if he wants it; and it is necessary, by all possible means to prevent speculations in lands.

11. No lands shall be granted to traders, as they live in the towns they do not want them.

12. Immediately on the arrival of a new settler, the oath of fidelity shall be requiredof him. If he is married, he shall prove that the wife whom he brings with him, is his lawful wife. If he has goods or personal property, they shall both declare what part of them belongs to the portion of the wife, and whether any part belongs to any person who is absent; giving them to understand, that if the contrary of what they assert is proved, the lands which are granted to them shall be taken back, with all the improvements they have made upon it.

13. At the time when they take the oath, the above particulars are to be attended to; and no lands are to be granted for any negroes which are not proved to be lawfully and wholly the property

of the emigrant; nor for the wife whom he brings with him, unless she is proved to be his lawful wife. In default of making such proofs, he is to be taken as coming within the description given in the 2d article.

14. The new settler to whom lands have been granted, shall lose them without recovery, if in the term of one year, he shall not begin to establish himself upon them, or if in the third year he shall not have put under labour ten arpens in every hundred.

15. He shall not possess the right to sell his lands, until he shall have produced three crops, on the tenth part of his lands which shall be well cultivated; but in case of death, he may leave them to his lawful heir, if he has a resident in the country. If he has no heir in the country, they shall in no event go to an heir who is not of the country, unless such heir shall resolve to come and reside in it, conformably to the established conditions.

16. Debts contracted out of the province, cannot be paid with the produce of lands thus granted, if there are debts due in the province, until after five harvests shall have been gathered. If for bad conduct, it shall become necessary to eject the settler from the country, before he shall have made the three crops necessary to give him the dominion of the soil, and the right to dispose of it, the lands shall then again become united to the domain of the king: and in the same state shall be granted alternately to the young man and to the young woman residing within one league of the land which shall thus become vacant, who by their good conduct shall best deserve such a gift. The question, who is entitled to this preference, shall be decided in an assembly of the most considerable people, headed by the commandant; which decision they shall make without any expense. They shall only consult me in the case, making known the circumstances for my approbation, and shall without delay put the deserving person in possession.

17. The forms established by my predecessors, in which to petition for lands, shall be followed under the conditions expressed in this order, with the difference only, that when the quantity of land amounts to or exceeds three hundred arpens, the fees to the secretary must be paid.

18. It shall not be permitted to any new settler to form an establishment at a distance from other settlers. The grants of lands must be so made, as not to leave pieces of vacant ground between one and another; since this would offer a greater exposure to the attacks of the Indians, and renders more difficult the administration of justice, and the regulation of the police, so necessary in all societies, and more particularly in new settlements.

(Signed) MANUEL GAYOSO DE LEMOS.

New Orleans, 9th Sept. 1797.

(No. II.)

General Regulations and Instructions of Morales, for Conceding Lands.

Don John Bonaventure Morales, Principal Comptroller of the Army and finances of the provinces of Louisiana and West Florida, Intendant (par interim) and sub-delegate of the superintendance, General of the same, Judge of Admiralty and of the lands, &c. of the King, &c.

The King, whom God preserve, having been pleased to declare and order by his decree given at Sta. Lorenzo, the 22d of October of the last year, 1798. That the intendancy of these provinces, to the exclusion of all other authority, be put in possession of the privilege, to divide and grant all kind of land belonging to his crown; which right after his order of the 24th of August, 1770, belonged to the civil and military government; wishing to perform this important charge, not only according to the 81st article of the ordinance of the intendants of New Spain, of the regulations of the year 1754, cited in the said article, and the laws respecting it, but also with regard to local circumstances; and those which may without injury to the interests of the king, contribute to the encouragement, and to the greatest good of his subjects already established, or who may establish themselves in this part of his possessions.

After having examined with the greatest attention the regulation made by his excellency Count O'Rielly, the 18th February, 1770, as well as that circulated by his excellency the present governor, Don Maneul Gayoso de Lemos, the first of January, 1798, and with the counsel which has been given me on this subject by Don Manuel Serrano assessor of the intendancy, and other persons of skill in these matters: that all persons who wish to obtain lands may know in what manner they ought to ask for them, and on what conditions lands can be granted or sold; that those who are in possession without the necessary titles, may know the steps they ought to take to come to an adjustment; that the commandants as sub-delegates of the intendancy, may be informed of what they ought to observe; that the surveyor general of this city, and the particular surveyors who are under him, may be instructed of the formalities with which they ought to make surveys of lands, or lots, which shall be conceded, sold, or arranged for; that the secretary of the finances may know the fees he is entitled to, and the duties he has to discharge, and that none may be ignorant of any of the things which may tend to the greatest advantage of an object so important in itself as the security of property, under the conditions to enlarge, change or revoke, that which time and circumstances may discover to be most useful and proper, to the attainment of the end, to which the benevolent intentions of his majesty are directed; I have resolved that the following regulations shall be observed.

Art. 1. To each newly arrived family (*à chaque famille nouvelle*) who are possessed of the necessary qualifications to be admitted among the number of cultivators of these provinces, and who have obtained the permission of the goverment to establish themselves on a place which they have chosen, there shall be granted *for once*, if it is on the bank of the Mississippi, four, six, or eight arpens in front on the river, by the ordinary depth of forty arpens, and if it is at any other place, the quantity which they shall be judged capable to cultivate, and which shall be deemed necessary for pasture for his beasts; in proportion according to the number of which the family is composed; understanding that the concession is never to exceed eight hundred arpens in superficies.

Art. 2. To obtain the said concession, if they are asked for in this city, the permission which has been obtained to establish themselves in the place from the governor, ought to accompany the petition; and if in any of the *posts*, the commandant at the same time will state that the lands asked for are vacant, and belong to the domain, and that the petitioner has obtained permission of the government to establish himself: and referring to the date of the letter or advice they have received.

Art. 3. Those who obtain concessions on the bank of the river, ought to make, in the first year of their possession, *levees* sufficient to prevent the inundation of the waters, and canals sufficient to drain off the water when the river is high, they shall be held in addition to make and keep in good order a public highway, which ought to be at least thirty feet wide, and have bridges of fifteen feet over the canals or ditches which the road crosses, which regulations ought to be observed according to the usages of the respective districts, by all persons to whom lands are granted, in whatever part they are obtained.

Art. 4. The new settlers who have obtained lands, shall be equally obliged to clear and put in cultivation, in the precise time of three years, all the front of their concessions, or the depth of at least two arpens, on the penalty of having the lands granted, remitted to the domain, if this condition is not complied with. The commandants and syndic's, will watch that what is enjoined, in this and the preceding article be strictly observed, and occasionally inform the intendant of what they may have remarked, well understanding that in case of default they will be responsible to his majesty.

Art. 5. If a tract of land belonging to minors remain without being cleared, or as much of it as the regulations require, and that the bank, the road, the ditches and the bridges are not made, the commandant or syndic of the district will certify from whom the fault has arisen, if it is in the guardian, he will urge him to put it in order, and if he fails he shall give an account of it; but if the fault arises from the want of means of the minor to defray the expence, the commandant or syndic shall address a statement of it to the intendancy, to the end that sale of it may be ordered for the benefit of the minor, to whom alone this privilege is allowed, if in the space of six months any purchaser presents, if not it shall be granted gratis to any person asking it, or sold for the benefit of the treasury.

ART. 6. During the said term of three years, no person shall sell nor dispose of the land which has been granted to him, nor shall he ever after the term, if he has failed to comply with the conditions contained in the preceding article, and to avoid abuses and surprize in this respect, we declare that all sales made without the consent of the intendancy in writing, shall be null and of no effect; which consent shall not be granted until they have examined with a scrupulous attention if the conditions have or have not been fulfilled.

ART. 7. To avoid for the future the litigations and confusions of which we have examples every day. We have also judged it very requisite that the notaries of this city and the commandants of posts, shall not take any acknowledgment of conveyance of land obtained by concession unless the seller (grantor) presents and delivers to the buyer, the title which he has obtained and in addition, being careful to insert in the deed the metes and bounds, and other descriptions which result from the title, and the *procès-verbal* of the survey which ought to accompany it.

ART. 8. In case that the small depth which the points, upon which the land on the river is generally formed, prevent the granting of forty arpens according to usage, there shall be given a greater quantity in front to compensate it; or if no other person asks the concession, or to purchase it, it shall be divided equally between the persons nearest to it, that may repair the banks, roads, and bridges, in the manner as before prescribed.

ART. 9. Although the King renounces the possession of the lands sold, distributed or conceded in his name, those to whom they are granted or sold ought to be apprised that his majesty reserves the right of taking from the forests, known here under the name of Cypress woods, all the wood which may be necessary for his use, and more especially which he may want for the navy, in the same manner, and with the same liberty that the undertakers have enjoyed to this time; but this notwithstanding, they are not to suppose themselves authorized to take more than is necessary, nor to make use of splitting those which are cut down, and which are found to be unsuitable.

ART. 10. In the posts of Opelousas and Atakapas the greatest quantity of land that can be conceded, shall be one league front by the same quantity in depth, and when forty arpens cannot be obtained in depth, a half a league may be granted, and for a general rule it is established, that to obtain in said posts a half a league in front, by the same quantity in depth, the petitioner must be owner of one hundred head of cattle, some horses and sheep, and two slaves, and also in proportion for a larger tract, without the power however of exceeding the quantity before mentioned.

Art. 11. As much as it is possible and the local situation will permit, no interval shall be left between concessions, because it is very advantageous that the establishments touch, as much for the inhabitants who can lend each other mutual support, as for the more easy administration of justice, and the observance of rules of police indispensable in all places, but more especially in new establishments.

Art. 12. If notwithstanding what is before written, marshy lands or other causes shall make it necessary to leave some vacant lands, the commandants and syndics will take care that the inhabitants of the district alone may take wood enough for their use only, and well understanding that they shall not take more; or if any individual of any other post shall attempt to get wood, or cut fire wood, without having obtained the permission of this intendancy; besides the indemnity which he shall be held to pay the treasury for the damage sustained, he shall be condemned for the first time to the payment of a fine of twenty five dollars, twice that sum for the second offence, and for the third offence, shall be put in prison according as the offence may be more or less aggravated: the said fines shall be divided between the treasury, the judge and the informer.

Art. 13. The new settler (*comme le nouveau colon*) ~~to~~ whom land has been granted in one settlement, cannot obtain another concession without having previously proven that he had possessed the first during three years, and fulfilled all the conditions prescribed.

Art. 14. The changes occasioned by the current of the river are often the cause of one part of a concession becoming useless, so that we have examples of proprietors pretending to abandon and re-unite to the domain, a part of the most expensive for keeping up the banks, the roads, the ditches, &c. and willing to reserve only that which is good, and seeing that unless some remedy is provided for this abuse, the greatest mischief must result to the neighbors. We declare that the treasury will not admit of an abandonment, or re-union to the domain of any part of the land the owner wishes to get rid of, unless the abandonment comprehends the whole limits included in the concession or act, in virtue of which he owns the land he wishes to abandon.

Art. 15. All concessions shall be given in the name of the King, by the general intendant of this province, who shall order the surveyor general or one particularly named by him to make the survey, and mark the land by fixing bounds, not only in front but also in the rear; this (survey) ought to be done in the presence of the commandant or syndic of the district, and of two of the neighbors, and these four shall sign the *procès-verbal* which shall be drawn up by the surveyor.

Art. 16. The said *procès-verbal* with a certified copy of the same shall be sent by the surveyor to the intendant, to the end that on the original there be delivered by the consent of the king's attorney the necessary title paper; to this will be annexed the certified copy forwarded by the surveyor. The original shall be deposited in the office of the secretary of the treasury, and care shall be taken to make annually a book of all which have been sent, with an alphabetical list, to be the more useful when it is necessary to have recourse to it, and for greater security to the end that at all times and against all accidents the documents which shall be wanted can be found; the surveyor shall also have another book numbered, in which the procès-verbal of the survey he makes shall be recorded, and as well on the original, which ought to be deposited on record, as on the copy intended to be annexed to the title, he shall note the folio of the book in which he has enregistered the figurative plat of survey.

Art. 17. In the office of the finances there shall also be a book numbered, where the titles of concessions shall be recorded, in which beside the ordinary clauses, mention shall be made of the folio of the book in which they are transcribed: there must also be a note taken in the contadoria or chamber of accounts of the army and finances and that under the penalty of being void. The chamber of accounts shall also have a like book, and at the time of taking the note shall cite the folio of the book where it is recorded.

Art. 18. Experience proves that a great number of those who have asked for land, think themselves the legal owners of it, those who have obtained the first decree by which the survey is ordered to measure it and to put them in possession, others after the survey has been made have neglected to ask the title for the property, and as like abuses continuing for a longer time will augment the confusion and disorder which will necessarily result. We declare that no one of those who have obtained the said degrees, notwithstanding in virtue of them the survey has taken place and that they have been put in possession, cannot be regarded as owners of land until their real titles are delivered completed with all the formalities before recited.

Art. 19. All those who possess lands in virtue of formal titles, *(titres formels)* given by their excellencies the governor of this province since the epoch when it became under the power of the Spanish, and those who possessed them in the time when it belonged to France, so far from being interrupted, shall on the contrary be protected and maintained in their possessions.

Art. 20. Those who, without the title or possession mentioned in the preceding article are found occupying lands, shall be driven therefrom as from property belonging to the crown; but if they have occupied the same more than ten years, a compromise will be admitted to those who are considered as owners, that is to say, they shall not be deprived of their lands. Always that after information and summary procedure and with the intervention of the procurer of the king at the board of the treasury, they shall be obliged to pay a just and moderate retribution, calculated according to the extent of the lands, their situation and other circumstances, and the price of estimation for once paid, into the royal treasury. The titles to property will be delivered on referring to that which has resulted from the proceedings.

Art. 21. Those who are found in a situation expressed in the 18th article, if they have not cleared, nor done any work upon the land they consider themselves proprietors (of), by virtue of ~~the first~~ decree of the government, not being of the number of those who have been admitted in the class of *new comers* in being deprived or admitted to compromise, in the manner explained in the preceding article, if they are of that class, they shall observe what is ordered in the article following.

Art. 22. In the precise and preremptory term of six months, counting from the day when this regulation shall be published in each post, all those who occupy lands without titles from the governor, and those who in having obtained a certain number of arpens, have seized a greater quantity ought to make it known, either to have their titles made out, if there is any, or to be admitted to a compromise, or to declare that the said land belong to the domain, if they have not been occupied more than ten years, understanding if it passes the said term, if they are instructed by other ways, they will not obtain neither title nor compromise.

Art. 23. Those who give information of lands occupied after the expiration of the term fixed in the preceding article, shall have for their reward the one fourth part of the price, for which they are sold or obtained by way of compromise, and if desirable, he shall have the preference either by compromise at the price of appraisement, and there shall be made a deduction of one fourth as informer.

Art. 24. As it is imposible considering all the local circumstances of there provinces that all the vacant lands, belonging to the domain, should be sold at auction, as it is ordained by the law 15th, title 12th, book 4th of the collection of the laws of these kingdoms, the sale shall be made according as it shall be demanded, with the intervention of the king's attorney for the board of finances, for the price they shall be taxed, to those who wish to purchase, understanding if the purchasers have not ready money to pay, it shall be lawful for them to purchase the said lands at redeemable quit rent, during which they shall pay the five per cent yearly.

Art. 25. Beside the moderate price which (the) land ought to be taxed the purchasers shall be held to pay down the right of *media annata* or half years, to be remitted to Spain, which according to the custom of Havanna founded on law, is reduced to two and a half per cent, on the price of estimation and made eighteen per cent on the sum, *by the said two and an half per cent;* they shall also be obliged to pay down the fees of the surveyor and notary.

Art. 26. The sales of land shall be made subject to the same condition and charges of banks, roads, ditches and bridges contained in the preceding article. But the purchasers are not subject to lose their lands, if in the three first years they do not fulfil the said conditions. Commandants and syndic's shall oblige them to put themselves within the rule, begin to perform the conditions in a reasonable term; and if they do not do it, the said work shall be done at the costs of the purchasers.

Art. 27. Care shall be taken to observe in the said sales that which is recommended in the 11th article, seeing the advantages and utility which results from consolidating the establishments always when it is practicable.

Art. 28. The titles to the property of land which are sold or granted by way of compromise, shall be issued by the general intendant, who after the price of estimation is fixed, and of the *media annata* [half years,] or rent or quit rent, the said price of estimation shall have been paid into the treasury, shall put it in writing, according to the result of the proceeding which has taken place with the intervention of the Kings attorney.

Art. 29. The said procedure shall be deposited in the office of the finance, and the title be transcribed in another book intended for the recording of deeds and grants of land in the same manner as is ordered by the 17th article concerning gratuitous concessions. The principal chamber of accounts shall also have a separate book, to take a note of the titles issued for sales and grants under compromise.

Art. 30. The fees of the surveyor in every case comprehended in the present regulation, shall be proportionate to the labour, and that which has been customary till this time to pay. Those of the secretary of finances, unless there has been extraordinary labour, and where the new settlers are not poor, (for in this case he is not to exact any thing of them) shall be five dollars, and this shall include the recording and other formalities prescribed, and those of the appraisors and of the interpreters, if on any occasion there is reason to employ him to translate papers, take declarations or other acts, shall be regulated by the ordinance *(tarif)* of the province.

ART. 31. Indians who possess lands within the limits of the government shall not in any manner be disturbed, on the contrary they shall be protected and supported, and to this the commandants, syndic's and surveyors ought to pay the greatest attention, to conduct themselves in consequence.

ART. 32. The granting, nor sale of any lands shall not be proceeded in without formal information having been previously received that they are vacant, and to avoid injurious mistakes, we premise that beside the signature of the commandant or syndic of the district, this information ought to be joined by that of the surveyor, and of two of the neighbours well understanding. If, notwithstanding this necessary precaution, it shall be found that the land have another owner beside the claimant, and that there is sufficient reason to restore to him; the commandant or syndic, surveyor and the neighbours, who have signed the information, shall indemnify him for the losses he has suffered.

ART. 33. As far as it shall be practicable, the inhabitants shall endeavor that the petitions presented by them, to ask for lands, be written in the Spanish language, on which they ought also to write the advice or information which the commandants have given. In the posts where this is not practicable, the ancient usage shall be followed.

ART. 34. All the lots or seats belonging to the domain, which are found vacant either in this city, or boroughs, or villages already established, or which may be established, shall be sold for ready money, with the formalities prescribed in the article 24th, and others which concern the sale of lands.

ART. 35. The owners of lots or places, which have been divided, *(repartis)* as well those in front, as towards the N. E. and S. W. extremities, N. E and S. W. shall in three months, present to the intendancy, the titles which they have obtained, to the end, that in examining the same, if any essential thing is wanting, they may be assured of their property in a legal way.

ART. 36. The same thing shall be done before the sub-delegates of Mobile and Pensacola; for those who have obtained grants for lots in these respective establishments, to the end that this *intendancy*, being instructed thereon, may order what it shall judge most convenient to indemnify the royal treasury, without doing wrong to the owner.

ART. 37. In the (contadorerie) office of the comptroller, contadoria of the army, or chambers of accounts of this province, and other boards under the jurisdiction of this intendancy, an accompt shall be kept of the amount of sales or grants of lands, to instruct his majesty every year what this branch of the royal revenue produces, according as it is ordered in the 13th article of the ordinance of the king of the 15th October, 1754.

ART. 38. The commandants or syndics in their respective districts, are charged with the collection of the amount of the taxes or rent laid on lands for this purpose: the papers and necessary documents are to be sent to them, and they ought to forward annually to the general treasury the sums they have collected, to the end that acquittances clothed with the usual formalities may be delivered them.

And that the present regulation may come to the knowledge of every body, and that the thirty eight articles of which it is composed may have their full and entire effect, until it pleases his majesty to order otherwise; it shall be translated into French by M. Pierre Derbigny, the kings interpreter; shall be printed in the two languages, forwarded to all places and posts within the jurisdiction of this intendancy; that the commandants as sub-delegates thereof, shall make it known to the inhabitants in the usual form, and that it be published in this city. There shall also be sent a copy to M. the governor, and to the most illustrious Cabildo, to the end, that they please to lend their aid in the execution of that which has been before ordered, conformable to the laws and ordinances which have been made on this subject, and in the persuasion that this can be done without injury to the kings interest, and tend the more to the encouragement, the welfare, and prosperity of his subjects in this colony.

(Signed) JUAN VENTURA MORALES.

New Orleans, July 17th, 1799.

No. III.

Refusal of the Intendant to sell Lands, &c.

I have to reply to your communication No. 9, that I cannot at this time consent to the sale of lands, in the manner and under the circumstances requested; and I have to make the same reply to that of 6th February last, No. 8, in which you ask for one hundred thousand arpens. God preserve you, &c.

New Orleans, 3d *April,* 1800.

(Signed) RAMON DE LOPEZ Y ANGULA.

To DON HENRY PEYROUX,
Commandant at New Madrid.

No. IV.

A further refusal, because the proposals appear speculations hurtful to Poor People, &c.

It was never the intention of the king, to dispose of the lands in such large quantities, and under such circumstances, as are stated in your letter of the 9th of February last, No. 9, and the petition of the inhabitants accompanying it.

It is true that in the new regulation, there is provisions made for the sale of lands, in the manner referred to; but it is only under the previous formalities there specified, and with a reference to the ability and forces of the person desirous of purchasing, because it would not be just, that for a small consideration, one or more speculators should make themselves masters of a great extent of lands, to the prejudice of others coming to settle, and who would consequently find themselves driven to purchase those lands which they might otherwise have obtained, free of expense.

For these reasons, I cannot at present accede to the beforementioned proposal, which you will make known to the parties concerned. God preserve you, &c.

New Orleans, 3d April, 1800.

(Signed) **RAMON DE LOPEZ Y ANGULA.**

To Don Henry Peyroux.

No. V.

Communication of the decease of the Assessor of Intendancy, and no receiving petitions for public land till another is appointed.

On account of the death of the assessor of this intendancy, and there not being in the province a learned man, who can supply his place, I have closed the tribunal of affairs and causes relating to grants and compositions of royal lands, as the 81st article of the royal ordinance, for the intendants of New Spain, provides that for conducting that tribunal, and substantiating its acts, the concurrence of that officer shall be necessary.

I make this communication, to apprise you of this providence, and that you may not receive or transmit memorials for the grant of lands, until further orders. God preserve you, &c.

New Orleans, 1st December, 1802.

(Signed) **JUAN VENTURA MORALES.**

To Don Henry Peyroux.

LAWS

OF THE

UNITED STATES,

For ascertaining and adjusting titles and claims to land.

CHAPTER I.

26th March 1804.

Certain grants for lands in the territories ceded to the United States, declared null and void.

Sec. 1. All grants for lands within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, in the year one thousand eight hundred and three, the title whereof was, at the date of the treaty of St. Ildefonso in the crown government, or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted, or pretended, be and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity: *Provided nevertheless,* That any thing in this section contained shall not be construed to make null and void any bona fide grant, made agreeably to the laws, usages, and customs of the Spanish government to an actual settler on the lands so granted, for himself, and for his wife and family; or to make null and void any bona fide act or proceeding done by an actual settler agreeably to the laws, usages, and customs of the Spanish government, to obtain a grant for lands actually settled on by the person or persons claiming title thereto, if such settlement in either case was actually made prior to the twentieth day of December, one thousand eight hundred and three: *And provided further,* That such grant shall not secure to the grantee or his assigns more than one mile square of land, together with such other and further quantity as heretofore hath been allowed for the wife and family of such actual settler, agreeably to the laws, usages, and customs of the Spanish government. And that if any citizen of the United States or

Proviso.

Proviso.

other person, shall make a settlement on any lands belonging to the United States, within the limits of Louisiana, or shall survey, or attempt to survey, such lands, or to designate boundaries by marking trees, or otherwise, such offender shall, on conviction thereof, in any court of record of the United States, or the territories of the United States, forfeit a sum not exceeding one thousand dollars, and suffer imprisonment not exceeding twelve months; and it shall, moreover, be lawful for the President of the United States to employ such military force as he may judge necessary to remove from lands belonging to the United States any such citizen or other person, who shall attempt a settlement thereon. *L. U. S. vol. 7 chap.* 38, *sec.* 14.

CHAPTER II.

2nd March, 1805.

Persons residing in the ceded territories, on the 1st Oct. 1800, &c. confirmed in their titles.

Sec. 1. Any person or persons~~, and the legal repre~~sentatives of any person or persons, who, on the first day of October, in the year one thousand eight hundred, were resident within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, one thousand eight hundred and three, and who had, prior to the said first day of October, one thousand eight hundred, obtained, from the French or Spanish governments, respectively, during the time either of the said governments had the actual possession of said territories, any duly registered warrant, or order of survey, for lands, lying within the said territories, to which the Indian title had been extinguished, and which were, on that day, actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands, in the same manner as if their titles had been completed: *Provided however,* That no such incomplete title shall be confirmed, unless the person, in whose name such warrant or order of survey had been granted, was, at the time of its date, either the head of a family, or above the age of twenty-one years;* nor unless the conditions and terms, on which the completion of the grant might depend, shall have been fulfilled. *Acts of 8th congress, chap.* 56, *sec.* 1.

Proviso.

Grants to persons actually

Sec. 2. To every person, or to the legal representative or representatives of every person, who, being either at the head of a family, or twenty-one years of age, had, prior to the twentieth day of December, one thousand eight hundred and three, with the permission of the proper Spanish officer,* and in conformity with the laws, usages and customs of the Spanish government, made an actual settlement on a tract of land, within the said territories, not claimed by virtue of the preceding section, or of any Spanish or French grant, made and completed before the first day of October, one thousand eight hundred, and during the time the government, which made such grant, had the actual possession of the said territories, and who did, on the said twentieth day of December, one thousand eight hundred and three, actually inhabit and cultivate the said tract of land;† the tract of land thus inhabited and cultivated shall be granted: *Provided however*, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than one mile square, together with such other and further quantity, as heretofore has been allowed for the wife and family of such actual settler, agreeably to the laws, usages and customs of the Spanish government: *Provided also*, That this donation shall not be made to any person, who claims any other tract of land, in the said territories, by virtue of any French or Spanish grant. *ib. ib. sec.* 2.

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* *This exception is repealed by act of the 3d March,* 1807. *See chap. V. sec. I. and see also chap. IV. sec.* 2.

settled prior to the 20th Dec. 1803, &c.

Proviso.

Proviso.

Sec. 3. For the purpose of more conveniently ascertaining the titles and claims to land in the territory ceded as aforesaid, the territory of Orleans shall be laid off into two districts, in such manner as the President of the United States shall direct: in each of which, he shall appoint in the recess of the senate, but who shall be nominated at their next meeting, for their advice and consent, a register; who shall receive the same annual compensation, give security in the same manner, and the same sums, and whose duties and authorities shall in every respect be the same in relation to the lands which shall hereafter be disposed of at their offices, as are by law provided with respect to the registers in the several offices established for the disposal of the lands of the United States, north of the river Ohio, and above the mouth of Kentucky river. The President of the Uni-

Territory of Orleans to be laid off into two districts, &c.

A register to be appointed for this purpose in each.

His compensation, duties, &c.

A recorder of

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* *Three years residence considered as proof of permission by act of* 21*st April*, 1806, *see chap IV. sec.* 1 *and ten years possession considered as proof of title, by act of* 3*d March*, 1807, *see chap. V. sec.* 2.

† *The necessity of permission and cultivation is dispensed with in certain cases, by the act of* 13*th June*, 1812. *See chap. VI. sec.* 8.

land titles to be appointed for Louisiana district. His compensation &c.

ted States, shall likewise appoint a recorder of land titles in the district of Louisiana, who shall give security in the same manner, and the same sums, and shall be intitled to the same annual compensation, as the registers of the several land offices. *ib. ib. sec.* 3.

Persons claiming lands in the abovementioned territories, under French or Spanish grants, &c.

By whom the foregoing claims to be recorded, &c. Officers fees, &c.

Proviso.

Sec. 4. Every person claiming lands in the abovementioned territories, by virtue of any legal French or Spanish grant, made and completed before the first day of October, one thousand eight hundred, and during the time the government which made such grant, had the actual possession of the territories, may, and every person claiming lands in the said territories, by virtue of the two first sections of this act, or by virtue of any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, shall, before the first day of March, one thousand eight hundred and six, deliver to the register of the land office, or recorder of land titles, within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plat of the tract or tracts claimed,* and shall also on or before that day, deliver to the said register or recorder, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim;† and the same shall be recorded by the register or recorder, or by the translator hereinafter mentioned, in books to be kept by them for that purpose, on receiving from the parties, at the rate of twelve and an half cents for every hundred words contained in such written evidence of their claim: *Provided however,* That where lands are claimed by virtue of a complete French or Spanish grant as aforesaid, it shall not be necessary for the claimant to have any other evidence of his claim recorded, except the original grant or patent, together with the warrant or order of survey, and the plat; but all the other conveyances or deeds shall be deposited with the register or recorder, to be by them laid before the commissioners hereinafter directed to be appointed, when they shall take the claim into consideration. And if such person shall neglect to deliver such notice in writing of his claim, together with the plat as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the two first sections of this act, shall become void, and forever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed or conveyance, or other written evidence which shall not be recorded as above directed, ever after be considered, or admitted as evidence in any court of the United States, against any grant derived from the United States. The said register and recorder shall commence the duties hereby enjoined on them, on or before the first day of September next, and continue to discharge the same, at such place in their respective districts, as the President of the United States shall direct. *ib. ib. sec.* 4.

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* *The obligation of filing a plat of survey is repealed in part by act of* 28*th Feb* 1806 *see chap.III.sec.*1,*and the time for filing notices and evidences of claims extended to* 1*st July* 1808, *by act* 3*d March* 1807. *See chap V. sec* 4; *and to actual settlers to the* 1*st Dec.* 1812 *by act* 13*th June* 1812. *See chap.VI. sec.* 7,*and to the inhabitants of Arkansas,until the* 1*st January* 1814, *by act* 2*nd August* 1813. *See chap. VIII sec.* 1.

† *Where notices have been filed, further time is given for filing evidence of claims until the* 1*st Jan'y.* 1814, *by act* 3*d Mar.* 1813, *see chap.* 7, *sec.* 1; *and to the inhabitants of Arkansas, until first of July* 1814, *by act* 2 *Aug.* 1813, *see chap.* 8 *sec.* 5.

Register and recorder to commence, &c.

Sec. 5. Two persons to be appointed by the President alone, for the district of Louisiana, and two persons, to be in the same manner appointed for each of the districts directed by this act to be laid off in the territory of Orleans, shall, together with the register or recorder of the district for which they may be appointed, be commissioners for the purpose of ascertaining within their respective districts, the rights of persons claiming under any French or Spanish grant as aforesaid, or under the two first sections of this act. The said commissioners shall previous to their entering on the duties of their appointment, respectively take and subscribe the following oath or affirmation, before some person qualified to administer the same:—I do solemnly swear (or affirm) that I will impartially exercise and discharge the duties imposed on me by an act of Congress, entitled "An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans, and district of Louisian," to the best of my skill and judgment." It shall be the duty of the said commissioners to meet in their respective districts, at such place as the President shall have directed therein, for the residence of the register or recorder, on or before the first day of December next; and they shall not adjourn to any other place, nor for a longer time than three days, until the first day of March, one thousand eight hundred and six, and until they shall have completed the business of their appointment. Each

Commissioners to be appointed for the district of Louisiana, &c.

The oath of office which they must take.

To meet in their respective districts at such places as may be the residence of the recorders, registers, &c.

Powers of the

boards of commissioners.

Decisions of the boards to be laid before Congress. Proviso.

The boards to appoint a clerk. His duties.

Transcripts of decisions in favor of claimants, what to be done with them.

board or a majority of each board, shall in their respective districts, have power to hear and decide in a summary manner, all matters respecting such claims, also to administer oaths, to compel the attendance of and examine witnesses, and such other testimony as may be adduced, to demand and obtain from the proper officer and officers, all public records, in which grants of land, warrants, or orders of survey or any other evidence of claims to land, derived from either the French or Spanish governments, may have been recorded; to take transcript of such record or records, or of any part thereof; to have access to all other records of a public nature, relative to the granting, sale, transfer or titles of lands, within their respective districts; and to decide in a summary way, according to justice and equity, on all claims filed with the register or recorder, in conformity with the provisions of this act, and on all complete French or Spanish grants the evidence of which, though not thus filed, may be found of record on the public records of such grants; which decisions shall be laid before congress in the manner hereinafter directed, and be subject to their determination thereon:* *Provided however*, That nothing in this act contained, shall be construed so as to recognize any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, or to authorise the commissioners aforesaid to make any decision thereon. The said boards respectively shall have power to appoint a clerk, whose duty it shall be to enter in a book to be kept for that purpose, full and correct minutes of their proceedings and decisions, together with the evidence on which such decisions are made, which books and papers, on the dissolution of the boards, shall be deposited in the respective offices of the registers of the land offices, or of the recorder of land titles of the district; and the said clerk shall prepare two transcripts of all the decisions made by the commissioners in favor of the claimants to land; both of which shall be signed by a majority of the said commissioners, and one of which shall be transmitted to the officer exercising in the district the authority of surveyor general; and the other to the secretary of the treasury. It shall likewise be the duty of the said commissioners, to make to the secretary of the treasury, a full report of all the claims filed with the register of the proper land office, or recorder of land titles, as above directed, which may have been rejected, together with the substance of the evidence adduced in support thereof, and such remarks thereon as they may think proper; which reports, together with the transcripts of the decisions of the commissioners in favor of the claimants, shall be laid by the secretary of the treasury before Congress, at their next ensuing meeting. When any Spanish or French grant, warrant, or order of survey as aforesaid, shall be produced to either of the said boards, for lands, which were not at the date of such grant, warrant or order of survey, or within one year thereafter, inhabited cultivated or occupied, by or for the use of the grantee; or whenever either of the said boards, shall not be satisfied that such grant, warrant, or order of survey, did issue at the time when the same bears date, but that the same is antedated or otherwise fraudulent; the said commissioners shall not be bound to consider such grant, warrant or order of survey, as conclusive evidence of the title, but may require such other proof of its validity as they may deem proper. Each of the commissioners, and clerks aforesaid, shall be allowed a compensation of two thousand dollars, in full for his services as such; and each of the said clerks shall, previous to his entering on the duties of his office, take and subscribe the following oath or affirmation, to wit: "I do solemnly swear, (or affirm) that I will truly and faithfully discharge the duties of a clerk to the board of commissioners, for examining the claims to land, as enjoined by an act of Congress, entitled "An act ascertaining and adjusting the titles and claims to land within the territory of Orleans, and the district of Louisiana." Which oath or affirmation shall be entered on the minutes of the board. *ib. ib. sec.* 5.

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* *The Decisions of the commissioners are made final, with some exceptions, by act of the 3d March 1807, in cases of persons residing, &c. on the 20th December, 1803, and for tracts not exceeding a league square, see chap. V sec. 8.*

Reports of rejected claims likewise to be made,

And to be laid before Congress.

Grants antedated or otherwise defective not to be considered as conclusive evidence of title.

Compensations of the commissioners, clerks, &c. and their oath of office, &c.

Sec. 6. The secretary of the treasury shall be, and he is hereby authorised to employ three agents, one for each board, and whose compensation shall not exceed one thousand five hundred dollars each, for the purpose of appearing before the commissioners, in behalf of the United States, to investigate the claims for lands, and to oppose all such as said agents may deem fraudulent, and unfounded. It shall also be the duty

Agents to be employed for each board of comm'rs. Their compensation not to exceed 1,500 dollars. Their duties.

of the said agent, for the district of Louisiana, to examine into, and investigate the titles and claims, if any there be, to the lead mines within the said district, to collect all the evidence within his power, with respect to the claims to, and value of the said mines, and to lay the same before the commissioners, who shall make a special report thereof, with their opinions thereon, to the secretary of the treasury, to be by him laid before Congress, at their next ensuing session. The said board of commissioners shall each be authorised to employ a translator of the Spanish and French languages, to assist them in the dispatch of the business which may be brought before them, and for the purpose of recording Spanish and French grants, deeds, or other evidences of claims on the register's books. The said translator shall receive, for the recording done by him, the fees already provided by law, and may be allowed, not exceeding fifty dollars, for every month he shall be employed; provided that the whole compensation, other than that arising from fees, shall not exceed six hundred dollars.

Board of commissioners to employ a translator.

Fees to translator, and monthly compensation.

Feb. 28, 1806.

CHAPTER III.

Powers of the surveyor general to extend to Louisiana.

Sec. 1. The powers vested by law in the surveyor general, shall extend over all the public lands of the United States, in the territory of Louisiana, to which the Indian title has been, or hereafter shall be extinguished. It shall be the duty of the said surveyor general to appoint a sufficient number of skilful surveyors, as his deputies, in the said territory, one of whom he shall with the approbation of the secretary of the treasury, designate as his principal deputy for the same. Which said deputies shall severally take an oath, or affirmation, truly and faithfully to discharge the duties of their respective offices. The said principal deputy shall reside and keep an office in the said territory, and shall under the superintendance of the surveyor general, execute or cause to be executed by the other deputies, such surveys as may hereafter be authorised by law, or as he may be directed to execute by the commissioners appointed for the purpose of ascertaining the titles and claims to land within the territory aforesaid; and shall generally perform therein, in conformity with the regulations and instructions of the said surveyor general, the duties imposed by law on the said surveyor general. *Acts of 9th Congress, chap. XI, sec.* 1.

Deputy surveyors to be appointed. Their duties, &c.

Sec. 2. All the plots of surveys, and all other papers and documents pertaining, or which did pertain to the office of surveyor general, under the Spanish government, within the limits of the territory aforesaid, or to any other office heretofore established or authorised for the purpose of executing, or recording surveys of lands within the said limits, shall be delivered to the principal deputy aforesaid; and no plot of survey shall be admitted as evidence, in any court of justice, unless certified by the said principal deputy, to be a true copy of the record in his office. *ib. ib. sec.* 2.

Plots of surveys, appertaining to the office of surveyor gen'ral.

Sec. 3. So much of the act, entitled "An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans, and the district of Louisiana,"* as makes it the duty of every claimant to lands, within the territory of Louisiana, to deliver to the recorder of land titles a plot of the tract, or tracts, claimed by him, be, and the same is hereby repealed, so far as relates to claimants whose tracts had not been surveyed by the proper officer, under the Spanish government, prior to the twentieth day of December, one thousand eight hundred and three. And the commissioners appointed for ascertaining the titles and claims to lands, within either the territory of Louisiana, or that of Orleans, are hereby authorised to direct the officer exercising the powers of surveyor general, within the same, to execute such surveys as they may think necessary, for the purpose of deciding on claims presented for their decision: *Provided*, That the expense of executing such surveys shall be defrayed by the parties claiming the land, unless the same be claimed by a legal French or Spanish grant, made and completed before the first day of October, one thousand eight hundred: *And provided also*, and it is hereby further enacted, that every such survey, as well as every other survey, by whatever authority heretofore executed, those of the above mentioned legal and complete titles only excepted, shall be held and considered as private surveys only; and all the tracts of land, the titles of which may be ultimately confirmed by Congress, in conformity with the provisions of the act above mentioned, shall, prior to the issuing of patents, be re-surveyed, if judged necessary, under the authority of the person exercising the powers of surveyor general, and at the expense of the parties. *ib. ib. sec.* 3.

Part of a former act respecting plots of land, &c, repealed.

Commissioners to direct surveys.

Proviso.

Sec. 4. The surveyor general shall fix the compen-

Compensations.

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* *The act of the 2nd March,* 1805. *Ante chap. II, sec.* 4.

sation of the deputy surveyors, chain carriers, and axe-men, in the territory of Louisiana: *Provided*, That the whole expense of surveying and marking the lines, whether paid by the United States, or by individuals, shall not exceed three dollars per mile, for every mile that shall be actually run, or surveyed and marked. And the principal deputy, aforesaid, shall be entitled to receive from individuals the following fees, that is to say; for examining and recording the surveys executed by any of the deputies, at the rate of twenty-five cents for every mile of the boundary line of each survey, and for a certified copy of any plot of a survey in his office, twenty-five cents. *ib. ib. sec.* 4.

Proviso.

CHAPTER IV.

April 21, 1806.

What shall be considered an actual settlement.

Sec. 1. Every person or persons claiming a tract of land by virtue of the second section of the act, to which this act is a supplement* and who had commenced an actual settlement on such tract prior to the first day of October, one thousand eight hundred, and had continued actually to inhabit and cultivate the same, during the term of three years from the time when such actual settlement had commenced, and prior to the twentieth day of December, eighteen hundred and three, shall be considered as having made such settlement with the permission of the proper Spanish officer, although it may not be in the power of such person or persons to produce sufficient evidence of such permission. *Acts 9th Congress, chap. XXXIX, sec.* 1.

Claimants to land not 21 years of age confirmed in their titles, &c.

Sec. 2. Every person or persons rightfully claiming a tract of land, not exceeding six hundred and forty acres, by virtue of the act to which this act is a supplement,† shall be confirmed in his or their claims, if otherwise embraced by the provisions of the said act, although the person or persons, under whom the claim or claims originated, were not at the time when the same originated, above the age of twenty-one years: *Provided*, That the tract of land thus claimed, had been for the space of ten consecutive years, prior to the twentieth day of December, eighteen hundred and three, in the quiet possession of, and actually inhabited and cultivated by such person or persons, or for their use. *ib. ib. sec.* 2.

Proviso.

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* *Act of 2d March* 1805. *See chap. II, sec.* 2.

† *Act 2d March* 1805. *See chap. II, sec.* 1.

Registers of the land offices to appoint deputies.

Sec. 3. The registers of the land offices in the territory of Orleans, respectively, be and they are hereby authorised to appoint so many deputies, not exceeding one for each county in their respective districts, as they may think necessary, whose duty it shall be to receive, enter and file notices, and to receive and record written evidences of claims to lands lying in the county or counties to them respectively assigned, in the same manner as the register might do; and also, to transmit to the register the said notices and evidences, or such transcripts of abstracts of the same, as the said register, or the commissioners may direct; and generally to do and perform all such acts, in relation to such claims, as the said register may direct. Persons having claims to land may deliver the notices and evidences of the same, at their option, either to the register of the proper land office, or to his deputy, for the county in which such land lies; and each of the said deputies shall be entitled to receive the recording fees allowed to the register, by the act to which this act is a supplement, and in addition thereto, (or a compensation of five hundred dollars in full for all his services,) at the rate of one dollar for every claim filed with him, to be paid out of the monies appropriated for carrying into effect the act to which this act is a supplement. *ib. ib. sec* 4.

Their duty.

Evidences of claims to land how, and when delivered.

Fees.

Commissioners, their duties under this act.

Sec. 4. The commissioners appointed for the purpose of ascertaining the rights of persons claiming lands in the territory of Orleans, shall, in their respective districts, have the same powers, and perform the same duties, in relation to the claims thus filed, before the first day of January next, as if notice of the same had been given before the first day of March last, and as was provided by the act to which this act is a supplement, in relation to the claims therein described. Transcripts of the decisions of the said commissioners, and reports of the claims filed in conformity with the provisions of this act, shall be made and transmitted, as was provided by the act to which this act is a supplement, in relation to the claims therein described. It shall likewise be the duty of the said commissioners, to enquire into the nature and extent of the claims which may arise from a right or supposed right to a double or additional concession on the back of grants or concessions heretofore made, or from grants or concessions heretofore made to minors, and not embraced by the provisions of this act, or from grants or concessions made by the Spanish government, subsequent to the first day of April, one thousand eight hundred, for lands which were actually settled and inhabited on the twentieth day of December, one thousand eight hundred and three; and to make a special report thereon to the secretary of the treasury; which report shall be by him, laid before Congress at their next ensuing session. And the lands which may be embraced by such report, shall not be otherwise disposed of, until a decision of Congress shall have been had thereupon. *ib. ib. sec. 5.*

Compensations of the commissioners and registers.

Sec. 5. Each of the registers aforesaid, shall, in addition to his other emoluments, receive a compensation of five hundred dollars for the services to be performed under this act, prior to the first day of January next; and each of the commissioners aforesaid, shall receive at the rate of six dollars a day, for every day's actual attendance on the duties of his office, subsequent to the first day of January next: *Provided,* That the whole amount of compensation thus allowed, shall not for any commissioner exceed two thousand dollars: *And provided also,* That the president of the United States may, if he shall think proper, reduce, after the first day of January next the number of commissioners on either or both boards, to one or two persons, and in case of such reduction the commissioner or commissioners constituting the board, shall have the same powers which are vested by this act, or by the act to which this act is a supplement, in the board established by the act, to which this act is a supplement. The clerk of each of the boards shall be entitled to receive at the rate of fifteen hundred dollars a year; the translators at the rate of six hundred dollars a year, and the agents employed by the secretary of the treasury at the rate of fifteen hundred dollars a year, from the first day of January next, to the time when each board shall respectively be dissolved: *Provided,* That no more than one years compensation be thus allowed to each of the said clerks, translators, and agents: *And provided also,* That the secretary of the treasury may discontinue either one or both of said agents, whenever he shall think it proper, *ib. ib. sec.* 6.

Proviso.

Proviso.

Proviso.

Proviso.

Commissioners may change the

Sec. 6. The commissioners appointed for the purpose of ascertaining the rights of persons, claiming lands in the territories of Orleans and Louisiana, be and they are hereby authorised, if they shall think it necessary, for the purpose of obtaining oral evidence, either in support of, or in opposition to claims, which evidence could not be given at the usual place of their sittings, without oppression to the parties or witnesses, to remove their sittings, or to send for that purpose, one or more members of the board, to such other place or places, within their respective districts, as they may think necessary: And each of the commissioners going for that purpose, to such other place or places, shall, in addition to his compensation, receive at the rate of six dollars for every twenty miles, going to and returning from such place or places: *Provided*, That no commissioner, shall receive in the whole on that account, more than for the distance, from the usual place of the sittings of the board to the extreme settlements within his respective district. *ib. ib. sec. 7.*

places of their sessions.

Proviso.

Sec. 7. Each of the boards aforesaid, shall prepare and cause to be prepared, the reports and transcripts, which by law they are directed to make to the secretary of the treasury, in conformity with such forms as he may prescribe; and they shall also, in their several proceedings and decisions, conform to such instructions, as the said secretary may, with the approbation of the President of the United States, transmit to them in relation thereto. *ib. ib. sec.* 8.

Boards referred to make reports, &c.

CHAPTER V.

March 3, 1807.

Sec. 1. So much of the first section of the act, entitled "An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana,"* as provides that no incomplete title shall be confirmed, unless the person in whose name the warrant or order of survey had been granted, was at the time of its date, either the head of a family, or above the age of twenty one years, be and the same is hereby repealed. *Acts 9th Congress, chap. LXXXI sec.* 1.

Part of a former act repealed.

Sec. 2. Any person or persons, and the legal representative of any person or persons, who on the twentieth day of December, one thousand eight hundred and three, had for ten consecutive years prior to that day, been in possession of a tract of land not claimed by any other person, and not exceeding two thousand acres, and who were on that day resident in the ter-

Residents in the territories of Orleans or Louisiana, confirmed in their titles.

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* *Act 2d March,* 1805.

ritory of Orleans or Louisiana and had still possession of such tract of land, shall be confirmed in their titles to such tract of land: *Provided*, That no claim to a lead mine or salt spring, shall be confirmed merely by virtue of this section: *And provided also*, That no more land shall be granted by virtue of this section, than is actually claimed by the party, nor more than is contained within the acknowledged and ascertained boundaries of the tract claimed. *ib. ib. sec.* 2.

Proviso.

Claims to be decided according to the usages and customs of the French and Spanish governments, in certain cases.

Sec. 3. The commissioners appointed, or to be appointed, for the purpose of ascertaining the rights of persons claiming land in the territories of Orleans and Louisiana, shall have full powers to decide according to the laws and established usages and customs of the French and Spanish governments, upon all claims to lands within their respective districts, where the claim is made by any person or persons, or the legal representative of any person or persons who were on the twentieth of December, one thousand eight hundred and three, inhabitants of Louisiana, and for a tract not exceeding the quantity of acres contained in a league square, and which does not include either a lead mine or salt spring: which decision of the commissions, when in favor of the claimant, shall be final against the United States, any act of Congress to the contrary notwithstanding. *ib. ib. sec.* 4.

Time fixed for delivering notices of claims extended.

Sec. 4. The time fixed by the act abovementioned, and by the acts supplementary to the same, for delivering to the proper register or recorder, notices in writing and the written evidences of claims to land, be and the same is hereby extended, for the territories of Orleans and Louisiana, till the first day of July, one thousand eight hundred and eight,* and persons delivering such notices and evidences shall be entitled to the same benefit as if the same had been delivered within the time limited by the former acts;† but the rights of such persons as shall neglect so doing within the time limited by this act, shall, so far as they are derived from, or founded on, any act of Congress, ever after be barred and become void, and the evidences of their claims never after

Persons barred who neglect giving notices, &c.

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* *Further time given to actual settlers until* 1*st Dec.* 1812, *by the act of* 13*th June* 1812. *Chap. VI sec.* 7; *and to the inhabitants of Arkansas to the* 1*st Jan.*1814, *by act of* 13*th August*, 1813. *See chap. VIII, sec.* 1, *and where notices have been filed, time is given for filing evidences of claims until* 1*st Jan.* 1814, *by act* 3*d, March* 1813. *See chap. VII, sec.* 1, *and to* 1*st July*, 1814, *by act* 2*d Aug.* 1813. *See chap. VIII, sec.* 6.

† *See chap. II, Sec.* 4.

admitted as evidence in any court of law or equity whatever. *ib. ib. sec.* 5.

Certificates to be transmitted to surveyor general, &c.

Sec. 5. The commissioners, appointed or to be appointed for the purpose of ascertaining the rights of persons claiming lands in the territories of Orleans and Louisiana, shall respectively transmit to the secretary of the treasury, and to the surveyor general, or officer acting as surveyor-general, transcripts of the final decisions, made in favour of claimants, by virtue of this act, and they shall deliver to the party a certificate, stating the circumstances of the case, and that he is entitled to a patent for the tract of land therein designated, which certificate shall be filed with the proper register or recorder within twelve months after date. And the register or recorder, shall thereupon (a plat of the tract of land therein designated, being previously filed with him, or transmitted to him, by the officer acting as surveyor-general, in the manner hereinafter provided) issue a certificate in favor of the party; which certificate being transmitted to the secretary of the treasury, shall entitle the party to a patent, to be issued in like manner, as is provided by law for the issuing of patents for public lands, lying in other territories of of the United States. *ib. ib. sec.* 6.

Patents to issue.

Tracts of land thus granted, to be surveyed at expense of the parties, unless, &c.

Sec. 6. The tracts of land, thus granted by the commissioners, shall be surveyed, at the expense of the parties, under the direction of the surveyor-general, or officer acting as surveyor-general, in all cases where an authenticated plat of the land, as surveyed under the authority of the officer acting as surveyor-general, under the French, Spanish or American governments respectively, during the time either of the said governments had the actual possession of the said territories of Orleans and Louisiana, shall not have been filed with the proper register or recorder, or shall not appear of record on the public records of the said territories of Orleans and Louisiana. The said commissioners shall also be authorised, whenever they may think it necessary, to direct the surveyor-general, or officer acting as such, to cause any tract of land already duly surveyed, to be re-surveyed at the expense of the United States. And the surveyor-general, or officer acting as such, shall transmit general and particular plats of the tracts of land, thus surveyed, to the proper register or recorder, and shall also transmit

Commissioners authorised to direct re-surveys.

Surveyor gen. to transmit to secretary of the treasury.

copies of the said plats to the secretary of the treasury. *ib. ib. sec.* 7.

Reports of undecided claims to be transmitted to secretary of the treasury. Arrangement of claims.

Sec. 7. The commissioners aforesaid shall respectively report, to the secretary of the treasury, their opinion on all the claims to land within their respective districts, which they shall not have finally confirmed by the fourth section of this act.* The claims shall, in the said report or reports, be arranged into three general classes, that is to say: first, claims which, in the opinions of the commissioners ought to be confirmed, in conformity with the provisions of the several acts of Congress, for ascertaining and adjusting the titles and claims to land within the territories of Orleans and Louisiana; secondly, claims which, though not embraced by the provisions of the said acts, ought nevertheless in the opinion of the commissioners, to be confirmed, in conformity with the laws, usages and customs of the Spanish government; thirdly, claims which neither are embraced by the provisions of the said acts, nor ought, in the opinion of the commissioners, to be confirmed, in conformity with the laws, usages and customs of the Spanish government; and the said report and reports being, in other respects, made in conformity with the forms prescribed according to law, by the secretary of the treasury, shall by him be laid before Congress, for their final determination thereon, in the manner and at the time heretofore prescribed by law for that purpose. *ib. ib. sec.* 8.

Allowances & compensations.

Sec. 8. The following allowances and compensations shall be made to the several officers hereinafter mentioned, that is to say: to the principal deputy of the surveyor-general, for the district of Louisiana, at the rate of five hundred dollars a year, from the time he entered into the duties of his office, in addition to the fees which he is entitled to receive by law. To the register of the western district of the Orleans territory, and to the clerk of the board of commissioners for that district, one thousand dollars each, for their service as commissioners and clerk respectively, during the year one thousand eight hundred and six. To each of the deputy registers of the territory of Orleans, five hundred dollars, in full for their services subsequent to the first day of January last, in addition to the fees to which they are legally entitled. To each of the commissioners, at the rate of two thousand dollars a year; to each of the clerks of the boards, and to each of the agents employed by the secretary of the treasury, at the rate of fifteen hundred dollars a year, and to each of the translators, at the rate of six hundred dollars a year, to commence from the first day of July next, in the district of Louisiana, and from the first day of January next, in the territory of Orleans, and to continue to the time when each board shall be respectively dissolved: *Provided*, That no more than eighteen months compensation be thus allowed to the said commissioners, clerks and translators, and that the compensation of any such officer, absenting himself from his district, or failing to attend to the duties of his office, shall cease during such absence or failure. *ib. ib. sec.* 9.

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* *Ante no.* 8.

Proviso.

CHAPTER VI.

13th June, 1812.

Sec. 1. The rights, titles and claims, to town or village lots, out lots, common field lots and commons, in, adjoining and belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Village a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prairie and Arkansas, in the territory of Missouri, which lots have been inhabited, cultivated or possessed, prior to the twentieth day of December, one thousand eight hundred and three, shall be and the same are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several rights in common thereto: *Provided*, That nothing herein contained shall be construed to affect the rights of any persons claiming the same lands, or any part thereof, whose claims have been confirmed by the board of commissioners for adjusting and settling claims to land in the said territory. And it shall be the duty of the principal deputy surveyor for the said territory as soon as may be, to survey, or cause to be surveyed or marked, (where the same has not already been done according to law) the out boundary lines of the said several towns or villages so as to include the out lots, common field lots and commons, thereto respectively belonging. And he shall make out plats of the surveys, which he shall transmit to the surveyor general who shall forward copies of the said plats to the commissioner of the General Land Office, and to the recorder of land ti-

Rights to certain lots confirmed.

But not to affect rights of others confirmed.

Deputy surveyor to mark boundary lines, &c.

And make out plats,

ties; the expense of surveying the said out boundary lines, shall be paid by the United States, out of any monies appropriated for surveying the public lands: *Provided,* That the whole expense shall not exceed three dollars for every mile that shall be actually surveyed and marked. *Acts of 12th Congress, chap. XCIX, sec.* 1.

Expense not to exceed $3 per mile.

Sec. 2. All town or village lots, out lots, or common field lots, included in such surveys, which are not rightfully owned or claimed by any private individuals or held as commons belonging to such towns or villages, or that the President of the United States may not think proper to reserve for military purposes, shall be, and the same are hereby reserved for the support of schools in the respective towns or villages aforesaid: *provided,* That the whole quantity of land contained in the lots reserved for the support of schools in any one town or village, shall not exceed one twentieth part of the whole lands included in the general survey of such town or village. *ib. ib. sec.* 2.

Lots to be reserved for the support of schools.

Proviso.

Sec. 3. Every claim to a donation of lands in the said territory, in virtue of settlement and cultivation, which is embraced by the reports of the commissioners, transmitted to the secretary of the treasury, and which by the said report, shall appear not to have been confirmed, merely because permission, by the proper Spanish officer, to settle, has not been duly proven; or because the tract claimed, although inhabited, was not cultivated on the twntieth of December, one thousand eight hundred and three, or not to have been confirmed, on account of both said causes; the same shall be confirmed, in case it shall appear that the tract so claimed was inhabited by the claimant or some one for his use prior to the twentieth day of December, one thousand eight hundred and three as aforesaid, and cultivated in eight months thereafter, subject, however, to every other limitation and restriction prescribed by former laws in respect to such claims; and in all cases where it shall appear by the said report or other records of the board that claims to land have not been confirmed merely on the ground that the claim was for a greater quantity than eight hundred arpens, French measure, every such claim to the extent of eight hundred arpens, shall be confirmed. *ib. ib. sec.* 3.

Claims confirmed.

Subject to certain limitations.

Other claims to be confirmed.

Sec. 4. The recorder of land titles for the said territory, shall, without delay, make an extract from the

Recorder to make extract

books of the said board of commissioners of all the claims to land which are, by the preceding section, directed to be confirmed, a copy of which he shall transmit to the commissioner of the general land office; and he shall furnish the principal deputy surveyor with a proper description of the tracts so to be confirmed, wherein the quantity, locality, boundaries and connection, when practicable with each other, and those tracts that have been confirmed by the board of commissioners shall be stated. And whenever plats of the surveys as hereinafter directed, shall have been returned to the said recorder's office, it shall be his duty to issue for each tract to be confirmed, as aforesaid, to the person entitled thereto, a certificate in favor of the party, which shall be transmitted to the commissioner of the general land office; and if it shall appear to the satisfaction of the said commissioner that such certificate has been fairly obtained, according to the true intent and meaning of this act, then, in that case, patents shall be granted in like manner as is provided by law for the other lands of the United States. *ib. ib. sec.* 4.

of claims from books

To transmit a copy to gen. Land Office.

Recorder to issue certificates.

Patents to be granted.

Sec. 5. The principal deputy surveyor shall survey, or cause to be surveyed, under the direction of the surveyor general, so much of the lands in the said territory, to which the Indian title has been extinguished, as the President of the United States may direct, into townships of six miles square, by lines running due north and south, and others crossing these at right angles; and also the lands, the claims to which are directed to be confirmed, by the third section of this act; and the lands, the claims to which have been confirmed by the board of commissioners, where the same has not already been surveyed under the authority of the United States. And the said principal deputy surveyor shall make out a general and connected plat of all the surveys directed by act to be made, or which have already been made under the authority of the United States, which he shall transmit to the surveyor general, who shall transmit copies of the said plat or plats to the recorder of land titles and the commissioner of the general land office. The expense of surveying shall be paid by the United States: *Provided*, The same shall not in the whole exceed three dollars a mile for every mile that shall be actually surveyed or marked. *ib. ib. sec.* 5.

Deputy surveyor to survey.

Townships to be laid off.

Plat to be made.

Expense not to exceed $3 per mile.

Sec. 6. In all cases where by reason of the indefinite

Recorder to furnish descriptions.

Access to books allow'd.

Recorders fee.

description of the local situation and boundaries of any tract, the claim to which has been confirmed by the commissioners, the same cannot be ascertained by the principal deputy surveyor, it shall be the duty of the recorder of land titles on the application of the said principal deputy, to furnish such precise description thereof, as can be obtained from the records in his office, and the books of the said board of commissioners; and for the purpose of the more correctly ascertaining the locality and boundaries of any such tracts, the said principal deputy, shall have free access at all seasonable hours to the books and papers in the recorder's office, relating to land claims, and be permitted to take copies or such extracts therefrom, or any of them, as he may think proper and necessary for the discharge of his duty in executing such surveys. And the said recorder shall be allowed twenty five cents for the description of each tract which he shall furnish to the principal deputy surveyor as aforesaid. *ib. ib. sec.* 6.

Actual settlers allowed until 1st December, 1812, to furnish evidence of claims, &c.

Barred forever after.

Sec. 7. Every person or persons claiming lands in the territory of Missouri, who are actual settlers on the lands which they claim, and whose claims have not been heretofore filed with the recorder of land titles for the said territory, shall be allowed until the first day of December next,* to deliver notices in writing, and the written evidences of their claims to the said recorder; and the notices and evidences so delivered within the time limited by this act, shall be recorded in the same manner, and on payment of the same fees as if the same had been delivered before the first day of July, one thousand eight hundred and eight;† by the rights of such persons as shall neglect so doing within the time limited by this act, shall, so far as they are derived from, or founded on any act of Congress, ever after be barred and become void, and the evidences of their claims never after admitted as evidence in any court of the United States, against any grant derived from the United States. *ib. ib. sec.* 7.

Power and duty of recorder.

Sec. 8. The said recorder of land titles, shall have the same powers, and perform the same duties in relation to the claims thus filed before the first day of December next, and the claims which have been heretofore filed, but not decided on by the commissioners, as the board of commisioners had by former laws respecting claims filed prior to the first day of July, one thousand eight hundred and eight, except that all of his decisions shall be subject to the revision of Congress. And it shall be duty of the said recorder to make to the commissioner of the general land office a report of all the claims which shall be thus filed before the first day of December next, and of the claims which have been already filed but not decided on by the said commissioners; together with the substance of the evidence in support thereof, with his opinion and such remarks as he may think proper, which report together with a list of the claims which, in the opinion of the said recorder, ought to be confirmed, shall be laid by the commissioner of the general land office before Congress, at their next session, for their determination thereon. The said recorder in addition to his salary as fixed by law, shall be allowed fifty cents for each claim which has been filed, but not decided on by the commissioners; or which shall be filed according to this act, and on which he shall make a decision, whether such decision be in favor of, or against the claim, and a further allowance of five hundred dollars, which shall be paid after he shall have made his report to the commissioner of the general land office; which allowance of fifty cents for each claim decided on, and five hundred dollars on the completion of the business, shall be in full compensation for his services, including clerk hire, respecting the claims to be decided on according to this act. *ib. ib. sec.* 8.

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* *Further time allowed, see chap. VII, sec.* 1. † *See chap. V, Sec.* 4.

Additional fee.

Further allowance.

CHAPTER VII.

3 March 1813.

Sec. 1. Every person or persons who had filed a notice of claim to any tract of land lying within the district of Louisiana (now territory of Missouri) with the recorder of land titles, according to law, and have not exhibited any testimony or written evidence in support of the same, and whose claim has not already been confirmed, shall be allowed until the first of January next, to deliver to the recorder of land titles for said territory the written evidence, or produce other testimony, in support of his or their claim, notice whereof had been filed as aforesaid; and the written evidence delivered to the said recorder within the time limited by this section, in support of claims filed as aforesaid, shall be by him recorded in the same manner, and on

Further time allowed to claimants.

receiving the same fees allowed by former acts for recording written evidence of claims to lands in the said district, and the rights of any such person neglecting to deliver the evidence of their claims within the time abovementioned shall become barred and void, in so far as the same was derived from the United States, and the evidence thereof be incapable of being admitted in any court whatsoever. *Acts 12th Congress chap. CLXXXVI, sec.* 1.

Duties and powers of recorder.

Sec. 2. The recorder of land titles for the said territory shall have the same powers, and perform the same duties in every respect, in relation to the claims, whereof notice had been filed as aforesaid, and the written evidence in support thereof shall have been delivered, or other testimony produced within the time limited by this act, as the board of commissioners for ascertaining the rights of persons claiming lands in said district would have had or should have performed if the evidence of such claims had been delivered before the first day of July, one thousand eight hundred and eight, except that his decision shall be subject to the revision of Congress. *ib. ib. sec.* 2.

Duties of recorder.

Sec. 3. It shall be the duty of the said recorder to make to the commissioners of the general land office a report of all the claims which had been filed, and in support of which evidence shall be received as aforesaid, with the substance of such evidence, together with his opinion, and such remarks as he may think proper, which report, together with a list of the claims which in the opinion of the said recorder ought to be confirmed, shall be laid before Congress at their next session for their determination thereon. *ib. ib. sec.* 3.

Claimants when to receive their grants.

Sec. 4. Every person whose claim to a donation of a tract of land in said district has been confirmed by the board of commissioners appointed for ascertaining the rights of persons claiming lands in said district, and is embraced in their report transmitted to the secretary of the treasury, or which has been confirmed by the recorder of land titles, under the third section of this act, entitled "An act making further provisions for settling the claims to land in the territory of Missouri,"* approved on the thirteenth of June, one thousand eight hundred and twelve, shall be entitled to a grant for six hundred and forty acres, notwithstanding a less quantity shall have been allowed to him by the decision of the said commissioners, or recorder of land titles: *Provided,* That in no case shall the grant be for more land than was claimed by the party in his notice of claim, nor for more land than is contained within the acknowledged and ascertained boundaries of the tract claimed. *ib. ib. sec.* 4.

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* *Chap. VI sec. 3.*

Sec. 5. The principal deputy surveyor for the said territory shall survey or cause to be surveyed, under the direction of the surveyor general, a tract of six hundred and forty acres of land, to each claimant of a donation tract whose claim has been confirmed as aforesaid, except as provided by the last preceding section, where the quantity claimed by the party was less than six hundred and forty acres, and where the ascertained boundaries of the tract claimed does not include six hundred and forty acres, in which cases the survey shall contain only the land claimed, and the tracts thus to be surveyed shall consist of unappropriated lands, and in every case contain the improved lands, by virtue of the settlement on and cultivation of which the claimant's right to a donation has been confirmed, and in all cases where, by reason of adjacent prior claims, or the contiguity of the improvements of the persons entitled to donation grants, each claimant cannot obtain a tract of six hundred and forty acres, the vacant lands applicable to the object shall be divided between the claimants in such manner as shall appear to the principal deputy surveyor most equitable; and whenever plats of the surveys shall have been returned by the principal deputy surveyor to the office of the recorder of land titles, it shall be the duty of the recorder to issue for each tract, according to the survey returned to him, a certificate in favor of the party to each person entitled thereto, which shall be transmitted to the commissioner of the general land office; and if it shall appear to the satisfaction of the said commissioner that such certificate was fairly obtained, according to the true intent and meaning of this act, then in that case patents shall be granted in like manner as is provided by law for other lands of the United States. *ib. ib. sec.* 5.

Grants and patents when to be issued.

Sec. 6. The said recorder of land titles, in addition to his salary as fixed by law, shall be allowed fifty cents on each claim which had been filed, and in support of which evidence shall have been received, according to the first section of this act, and on which he

Salary of the recorder augmented.

shall make a decision, whether such decision be in favor of, or against the claim, and a further allowance of five hundred dollars, which shall be paid after he shall have made his report to the commissioner of the general land office, which allowance of fifty cents for each claim decided on, and five hundred dollars on the completion of the business, shall be in full compensation for his services, including clerk hire, respecting the claims to be decided on according to this act *ib. ib. sec.* 6.

2d Aug. 1813.

CHAPTER VIII.

Further time allowed for filing certain land claims

Sec. 1 Every person or persons claiming lands in the late district of Arkansas, in the territory of Missouri, who are actual settlers on the land which they claim, and whose claims have not been heretofore filed with the recorder of land titles for the territory of Missouri, shall be allowed until the first day of January next, to deliver notices in writing and the written evidence of their claims to the recorder of land titles in the territory aforesaid; and the notices and evidences so delivered within the time limited by this act, shall be recorded in the same manner, and on payment of the same fees, as if the same had been delivered before the first day of July, one thousand eight hundred and eight; but the right of such persons as shall neglect so doing, within the time limited by this act, shall so far as they are derived from or founded on any act of Congress, ever after be barred and become void, and the evidences of their claims never after admitted as evidence in any claim of the United States, against any grant derived from the United States. *Acts 13th Congress, chap. LVIII, sec.* 1.

Recorder of land titles for the territory of Missouri, &c.

Sec. 2. The recorder of land titles for the territory of Missouri, shall have the same powers and perform the same duties in every respect in relation to the claims that may be filed according to the preceding section, as the board of commissioners for ascertaining and adjusting claims to lands in the district of Louisiana would have had or should have performed, if such notice had been filed and such evidence delivered before the first day of July, one thousand eight hundred and eight, except that his decission shall be subject to the revision of Congress. *ib. ib. sec.* 2.

Recorder to

Sec. 3. It shall be the duty of the said recorder of land titles, to make the commissioner of the general land office a report of all claims filed with said recorder, with the substance of the evidence in support thereof; and also his opinion, and such remarks respecting the claims as he may think proper to make; which report, together with a list of the claims which in the opinion of the said recorder ought to be confirmed, shall be laid by the commissioner of the general land office before Congress for their determination, *ib. ib. sec.* 3.

make reports to commissioners of the general land office.

Sec. 4. The said recorder shall be allowed fifty cents for each claim on which a decision shall be made, whether such decision shall be in favor or against the claims, which allowance shall be in full for his services under this act. *ib. ib. sec.* 4.

Fees to recorder.

Sec. 5. In every case where notice of the claim shall have been filed under former laws, and in which no testimony shall have been produced, the claimants shall be allowed until the first day of July, one thousand eight hundred and fourteen, to produce to said recorder testimony in support of such claim; and the said recorder shall in relation to such claims have the same powers and perform the said duties as are required of him on claims filed under this act. *ib. ib. sec.* 5.

Where notice shall have been filed under former laws, claimants to have further time.

CHAPTER IX.

12 April 1814.

Sec. 1. Every person or persons, or the legal representatives of any person or persons claiming lands in the state of Louisiana, or the territory of Missouri, by virtue of any incomplete French or Spanish grant or concession, or any warrant or order of survey, which was granted prior to the twentieth of December, one thousand eight hundred and three, for lands lying within that part of the state of Louisiana which composed the late territory of Orleans, or which was granted for lands lying within the territory of Missouri, before the tenth day of March, one thousand eight hundred and four, and where the claimant, or the person under whom he claims, were resident in the province of Louisiana at the respective times aforesaid, or at the time the said concession, warrant, or order of survey was granted, and whose claims have been filed with the proper register or recorder of land titles according to law, and are embraced in the report of the commissioners, or register, or recorder, for the dis-

Certain claimants confirmed in their titles or claims.

trict within which the lands claimed do lie, in every case where it shall appear by the said report of the commissioners, register, or recorder, that the concession, warrant, or order of survey, under which the claim is made, contains a special location, or had been actually located or surveyed within the late territory of Orleans before the twentieth day of December, one thousand eight hundred and three, or actually located or surveyed within the territory of Missouri, before the tenth day of March, one thousand eight hundred and four, by a surveyor duly authorised by the government making such grant, such person shall be, and they are hereby confirmed in their claims: *Provided*, That no claim shall be confirmed by this section which shall have been adjusted by either of the boards of commissioners, or a register or receiver of public moneys, or a recorder, acting as such, to be antedated, or otherwise fraudulent: nor any one to claim a greater quantity of land than the number of arces contained in one league square, nor the claim of any person, in his own right, who has received, in his own right, a donation grant from the United States, in said state or territory: *And provided also*, That no confirmation made by this section shall effect the rights of any person claiming the same lands or any part thereof, whose claim has been confirmed by a board of commissioners for ascertaining and adjusting claims to land in said state or territory, nor preclude a judicial decision between private claimants in such interfering claims. *Acts 14th Congress, chap. III, sec.* 1.

Proviso.

Proviso.

Certain other claims confirmed.

Sec. 2. Every person or persons claiming lands in the said state or territory, by right of donation under any former laws, whose claims are contained in the report of any of the boards of commissioners, or the report of the register and receiver of public moneys, or of the recorder of land titles made, or hereafter to be made, under existing laws, and which claims shall appear by the said reports not to have been confirmed, merely because the tracts claimed were not inhabited on the twentieth of December, one thousand eight hundred and three, such person or persons shall be and they are hereby confirmed in their respective claims: *Provided*, That in every other respect such claims shall be embraced by the provisions, and conform to the limitations and restrictions prescribed by former laws for granting the right of donations in the said state and territory. *ib. ib. sec. 2.*

The proper registers of land offices and recorders of land titles to give the necessary certificates

Sec. 3. It shall be the duty of the several registers of the land offices, and of the recorder of land titles in the state or territory aforesaid, with whom the claims in their respective districts have been entered, which are confirmed by this act, in all cases where the land has not been surveyed according to law, to make out, for the principal deputy surveyor of the district in which the land lies, an order of survey for each tract of land confirmed under this act, with a proper description of the tracts to be surveyed, wherein the quantity, locality, boundaries, and connexion, when practicable, with each other, and the tracts which have been heretofore confirmed, shall be stated; and on the return of the plat of survey, or where an order of survey is not necessary, the said register or recorder of land titles shall, on application for that purpose, make out for each claimant entitled thereto by the provisions of this act, a certificate of confirmation, directed to the commissioners of the general land office, and if [it] shall appear to the satisfaction of said commissioner, that such certificate shall have been fairly obtained according to the true intent and meaning of this act, then and in that case patents shall be granted in like manner as is provided by law for the other lands of the United States. And the said register or recorder shall be entitled to receive from the person applying therefor, where he shall have previously issued an order of survey, for such order of survey and certificate, the sum of one dollar and fifty cents, and for each certificate without an order of survey, the sum of one dollar. *ib. ib. sec. 3.*

Made the duty of the principal deputy surveyor to survey the lands designated by orders of survey.

Sec. 4. It shall be the duty of the principal deputy surveyor, on receiving an order of survey from the register or recorder of land titles, and the surveying fees from the claimant, which shall not exceed three dollars for every mile to be surveyed and marked, to survey or cause to be surveyed, under the direction of the surveyor general, or surveyor of the lands south of the state of Tennessee, the several tracts of land confirmed by this act; and the said principal deputy surveyor shall make return of the surveys in separate plats to the register or recorder of the district within which the land lies, and also transmit to the surveyor general, or surveyor of the lands south of the state of Tennessee, as the case may be, a plat or plats of the surveys directed to be made by this section, who shall respectively transmit copies thereof to the commissioner of the general land office. *ib. ib. sec.* 4.

29 April, 1816.

CHAPTER X.

Certain other claims confirmed.

Sec. 1. All claims embraced in the reports of the recorder of land titles, acting as commissioner for ascertaining and adjusting the titles and claims to land, in the territory of Missouri, dated November first, one thousand eight hundred and fifteen, and February second, one thousand eight hundred and sixteen, where the decision of the said commissioner is in favor of the claimants, shall be, and the same is hereby confirmed, to wit: confirmations of village claims under the act of congress of the thirteenth day of June, one thousand eight hundred and twelve:* grants of the late board of commissioners, appointed for ascertaining and adjusting the titles and claims to land in the territory of Missouri, extended by virtue of the fourth section of the act of the third of March, one thousand eight hundred and thirteen; grants and confirmations under the several acts of congress, commencing with the act of the thirteenth day of June, one thousand eight hundred and twelve. *Acts 14th Congress, chap.* 159, *sec.* 2.

Sec. 2. In all cases not provided for by law for patent certificates to issue, every person, and the legal representative of every person, whose claim to a tract of land is confirmed by this or any former act, and who has not already obtained a patent certificate for the same, shall, whenever his claim shall have been located and surveyed according to law, be entitled to receive from the register of the land office at Opelousas, in the state of Louisiana, or from the recorder of land titles in the territory of Missouri, as the case may be, a certificate, stating that the claimant is entitled to a patent for such tract of land, by virtue of this act, for which certificate the officer issuing the same shall receive one dollar, and the certificate shall entitle the party to a patent for the tract of land, which shall issue in like manner as is provided by law for patents to issue for lands purchased of the United States. *ib. ib. sec.* 3.

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[*] *Ante chap. VI.*

CHAPTER XI.

3d Mar 1811.

Surveyor general to cause certain portions of public lands in territory of Louisiana to be surveyed and divided.

Sec. 1. The surveyor general shall cause such of the public lands in the territory of Louisiana, as the president of the United States shall direct, to be surveyed and divided in the same manner and under the same regulations and limitation as to expenses, as is provided by law in relation to the lands of the United States, north west of the river Ohio and above the mouth of Kentucky river. *Acts of the 11th Congress, chap. CXIII, sec. 8.*

Office to be established for disposing of public land in territory of Louisiana.

Sec. 2. For the disposal of the lands of the United States lying in the territory of Louisiana, a land office shall be established, which shall be kept at such place as the president of the United States may direct; and a register and receiver of public monies shall be appointed for said office, who shall give security in the same manner, in the same sums and whose compensations, emoluments, duties and authority, shall in every respect be the same, in relation to the lands which shall be disposed of at their office, as are or may be provided for by law in relation to the register and receiver of public monies in the several offices established for the disposal of the lands of the United States, north west of the river Ohio, and above the mouth of Kentucky river. *ib. ib. sec. 9.*

Lands in territory of Louisiana to be offered for sale.

Sec. 3. The president of the United States, be and he is hereby authorised, whenever he shall think proper, to direct so much of the public lands lying in the territory of Louisiana, as shall have been surveyed in conformity with the eighth section of this act,* to be offered for sale. All such lands shall, with the exception of the section "number sixteen," which shall be reserved in each township for the support of schools within the same, with the exception also of a tract reserved for the support of a seminary of learning, as provided for by the seventh section of this act,† and with the exception also of the salt springs, and lead mines, and lands contiguous thereto; which by the direction of the President of the United States, may be reserved for the future disposal of the said states, shall be offered for sale to the highest bidder, under the direction of the register of the land office and the receiver of public monies and of the principal deputy surveyor, and on such day or days, as shall, by public proclamation of the president of the United States, be designated for that purpose. The sales shall remain open for three weeks and no longer. The lands shall be sold for a price not less than that which has been or may be fixed by law for the public lands, north west of the river Ohio, and above the mouth of Kentucky river. And shall in every other respect be sold in tracts of the same size, on the same terms and conditions, as have been or may be by law provided for the lands sold in the state of Ohio. The superintendents of the public sales shall each receive six dollars for each day's attendance on the said said sales. All the lands which have been thus offered for sale, at public sale, remaining unsold at the close of the public sales, may be disposed of at private sale by the register of the land office, for the same price which is or may be prescribed by law for the sale of public lands in the state of Ohio; *Provided, however,* That till after the decision of Congress thereon, no tract of land shall be offered for sale, the claim to which has been in due time and according to law presented to the recorder of land titles in the district of Louisiana and filed in his office, for the purpose of being investigated by the commissioners appointed for ascertaining the rights of persons claiming lands in the territory of Louisiana. And patents shall be obtained for all lands sold in the territory of Louisiana, in the same manner and on the same terms as is or may be provided by law for land sold in the state of Ohio. *ib. ib. sec.* 10.

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* *Ante sec. 1.*

† *The seventh section provides that one entire township shall be reserved in the territory of Louisiana, for the support of a seminary of learning in said territory.*

Proviso.

Reservation.

Sec. 4. All the navigable rivers and waters in the territories of Orleans and Louisiana shall be and forever remain public highways. *ib. ib. sec.* 12.

29 April 1816.

CHAPTER XII.

Surveyor of public lands in the territories of Illinois and Missouri to be appointed—his duties

Sec. 1. A surveyor of the lands of the United States in the territories of Illinois and Missouri shall be appointed, whose duty it shall be to engage a sufficient number of skilful surveyors as his deputies, and to cause so much of the land above mentioned, as the president of the United States shall direct, and to which the titles of the Indian tribes have been extinguished, to be surveyed and divided in the manner, and to do and perform all such other acts in relation to such lands, as the surveyor general is authorised and directed to do, in relation to the same, or the lands lying northwest of the river Ohio: and it shall also be the duty of the surveyor to cause to be surveyed the lands in the said territories, the claims to which have been or hereafter may be confirmed by any act of congress, which have not already been surveyed according to law: and generally to do and perform all and singular the duties required by law to be performed by the principal deputy surveyor for the territory of Missouri; and shall transmit to the registers of the land offices within the said territories, respectively, general and particular plats, of all the lands surveyed, or to be surveyed, and shall also forward copies of said plats to the commissioner of the general land office; fix the compensation of the deputy surveyors, chain carriers, and axemen. *Provided,* That the whole expense of surveying and marking the lines shall not exceed three dollars for every mile that shall be run, surveyed and marked. *Acts of 14th Congress, chap.* 151, *sec.* 1.

Proviso.

His annual compensation and fees of office.

Sec. 2. The surveyor of the lands of the United States, appointed in pursuance of this act, shall be allowed an annual compensation of one thousand dollars, and shall be entitled to receive from individuals the following fees: that is to say, for recording the surveys executed by any of the deputies, at the rate of twenty five cents for every mile of the boundary line of such survey, and for a certified copy of a plat of a survey in his office twenty-five cents, and that all the plats of surveys, and all other papers and documents pertaining, or which did pertain to the office of the surveyor general under the Spanish government within the limits of the territory of Missouri, or to the office of principal deputy surveyor for said territory, or pertaining to the office of surveyor general, or to any office heretofore established or authorised for the purpose of executing or recording surveys of lands within the limits of the territories of Missouri and Illinois, shall be delivered to the surveyors of the lands of the United States, authorised to be appointed by this act: and any plat of survey duly certified by the said surveyor shall be admitted as evidence in any of the courts of the United States or territories thereof. *ib. ib. sec.* 2.

His plats and surveys made evidence.

Sec. 3. So much of the act entitled "an act extending the powers of the surveyor general to the territory of Louisiana, and for other purposes," passed February twenty-eighth, one thousand eight hundred and six, as provides for the appointment of a principal deputy surveyor, and so much of any act of congress [heretofore] passed, as is repugnant to, or inconsistent with, any provision of this act, be, and the same is hereby repealed. *ib. ib. sec.* 3.

Feb. 5, 1813.

PPE-EMPTION RIGHTS.

CHAPTER I.

Inhabitants and cultivators of land lying in district established for the sale thereof, entitled to preference in purchasing.

Proviso.

Proviso.

Sec. 1. Every person, or the legal representatives of every person, who has actually inhabited and cultivated a tract of land lying in either of the districts established for the sale of public lands, in the Illinois territory,* which tract is not rightfully claimed by any other person, and who shall not have removed from said territory; every such person and his legal representatives shall be entitled to a preference in becoming the purchaser from the United States of such tract of land at private sale, at the same price and on the same terms and conditions in every respect, as are or may be provided by law for the sale of other lands sold at private sale in said territory, at the time of making such purchase: *Provided,* That no more than one quarter section of land shall be sold to any one individual, in virtue of this act;† and the same shall be bound by the sectional and divisional lines run, or to be run, under the direction of the surveyor general for the division of the public lands: *Provided also,* That no lands reserved from sale by former acts, or lands which have been directed to be sold in town lots, and out lots, shall be sold under this act. *Acts 12th Congress, chap. CLXII, sec.* 1.

Persons claiming a preference in purchasing to deliver notice in writing to the register of the land office, &c.

Sec. 2. Every person claiming a preference in becoming the purchaser of a tract of land, in virtue of this act, shall make known his claim, by delivering a notice in writing, to the register of the land office, for the district in which the land may lie, wherein he shall particularly designate the quarter section he claims; which notice the register shall file in his office, on receiving twenty-five cents from the person delivering the same. And in every case where it shall appear to the satisfaction of the register and receiver of public monies of the land office, that any person, who has delivered his notice of claim, is entitled, according to the provisions of this act, to a preference in becoming the purchaser of a quarter section of land, such person so entitled shall have a right to enter the same, with the register of the land office, on producing his receipt from the receiver of public monies for at least one twentieth part of the purchase money, as in case of other public lands sold at private sale: *Provided*, That all lands to be sold under this act shall be entered with the register, at least two weeks before the time of the commencement of the public sales, in the district wherein the land lies: and every person having a right of preference in becoming the purchaser of a tract of land, who shall fail so to make his entry with the register, within the time prescribed, his right shall be forfeited, and the land by him claimed shall be offered at public sale, with the other public lands in the district to which it belongs. *ib. ib. sec.* 2.

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* *See chap. II.*

† *See chap. III.*

Proviso.

How the preference may be forfeited.

CHAPTER II.

12 April 1814.

Actual settlers entitled to the pre-emption.

Sec. 1. Every person, and the legal representatives of every person, who has actually inhabited and cultivated a tract of land lying in that part of the state of Louisiana, which composed the late territory of Orleans, or in the territory of Missouri, which tract is not rightfully claimed by any other person, and who shall not have removed from said state or territory, shall be entitled to the right of pre-emption in the purchase thereof, under the same restrictions, conditions, provisions, and regulations, in every respect as is directed by the act, entitled "An act giving the right of pre-emption in the purchase of lands, to certain settlers in the Illinois territory,"* passed February fifth, one thousand eight hundred and thirteen. *Acts 14th Congress, chap.* 111, *sec.* 5.

[illegible] to this, March 3. 1819
3 [illegible] S. p 517.

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* *Ante chap. I.*

CHAPTER III.

29 April, 1816.

Sec. 1. Any person, and the legal representaties of any person entitled to a preference in becoming the purchaser, from the United States, of a tract of land, at private sale in the state of Louisiana, and in the territories of Missouri and Illinois, according to the

Pre-emption rigth secured.

provisions of the act, entitled, "An act giving the right of pre-emption, in the purchase of lands, to certain settlers in the Illinois territory,"* passed February fifth, one thousand eight hundred and thirteen, and the fifth section of the "Act for the final adjustment of land titles in the state of Louisiana, and territory of Misssouri,"† passed April twelfth, one thousand eight hundred and fourteen, who is settled on a fraction of a section or fractional quarter section, containing less than one hundred and sixty acres, shall have the privilege of purchasing one or more adjoining fractional quarter sections, or the adjoining quarter section, including their improvements, or the fraction improved by them, at their option; and the provisions of the said recited acts are hereby made applicable to them so far as they are consistent with the provisions of this act. *Acts 14th Congress, chap.* 162, *sec.* 1.

How the claims of several persons, settled upon land are to be adjusted.

Sec. 2. In cases where two or more persons entitled to the right of pre-emption, shall be settled upon one quarter or fractional quarter section of land, each person shall be authorised to purchase one or more quarter sections, or fractional quarter sections, of the section or fractional section of land upon which they are so settled; and the section or fractional section upon which such persons are settled shall be equally divided between them, in such manner as the register and receiver, within whose district the land lies, shall determine and direct, so as to secure, as far as may be practicable, to every such person their improvements respectively, and where the improvements of such person shall be upon two or more quarter sections, such person shall be entitled to purchase the quarter sections upon which his improvement shall be. *ib. ib. sec.* 2

[illegible]
[illegible]
May 29. 1830

NEW-MADRID CLAIMS.

CHAPTER I.

Sec. 1. Any person or persons owning lands in the county of New Madrid, in the Missouri territory, with the extent the said county had on the tenth day of November, one thousand eight hundred and twelve, and whose lands have been materially injured by earthquakes, shall be and they hereby are authorised to locate the like quantity of land on any of the public lands of said territory, the sale of which is authorised by by law: *Provided*, That no person shall be permitted to locate a greater quantity of land under this act, than the quantity confirmed to him, except the owners of lots of ground or tracts of land of less quantity than one hundred and sixty acres, who are hereby authorised to locate and obtain any quantity of land not exceeding one hundred and sixty acres, nor shall any person be entitled to locate more than six hundred and forty acres, nor shall any such location include any lead mine or salt spring: *And provided also*, That in every case where such location shall be made according to the provisions of this act, the title of the person or persons to the land injured as aforesaid, shall revert to, and become absolutely vested in the United States. *Acts 3d ses. 13th Congress, chap.* 45, *sec.* 1.

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* *Ante chap. I.*

† *Ante chap. II.*

Proviso.

Recorder to issue certificate.

Sec. 2. Whenever it shall appear to the recorder of land titles for the territory of Missouri, by the oath or affirmation of a competent witness, or witnesses, that any person or persons are entitled to a tract or tracts of land under the provisions of this act, it shall be the duty of the said recorder to issue a certificate thereof to the claimant or claimants; and upon such certificate being issued, and the location made on the application of the claimants, by the principal deputy surveyor for said territory, or under his direction, whose duty it shall be, to cause a survey thereof to be made, and to return a plat of each location made to the said recorder, together with a notice in writing, designating the tract or tracts thus located, and the name of the claimant on whose behalf the same shall be made; which notice and plat the said recorder shall cause to be recorded in his office, and shall receive from the claimant for his services on each claim the sum of two dollars, for receiving the proof, issuing the certificate, and recording the notice and plat as aforesaid; and the surveyor shall be entitled to the same compensation for his services from the party applying, as is allowed for surveying the public lands of the United States. *ib. ib. sec.* 2.

Recorder of land titles to transmit a report of claims allowed.

Sec. 3. It shall be the duty of the recorder of land titles, to transmit a report of the claims allowed, and locations made, under this act, to the commissioner of the general land office, and shall deliver to the party a certificate, stating the circumstances of the case, and that he is entitled to a patent for the tract therein designated, which certificate shall be filed with the said recorder within twelve months after date, and the recorder shall thereupon issue a certificate in favor of the party, which certificate being transmitted to the commissioner of the general land office, shall entitle the party to a patent, to be issued in like manner as is provided by law for other public lands of the United States. *ib. ib. sec.* 3.

APPENDIX,

CONTAINING

FORMS.

(BOATMEN.)

Warrant against a boatman failing to do his duty.

Territory of Missouri, } ss. The United States of America,
County of } To any constable of said county

Whereas A. B. master of the boat now lying at in the county aforesaid, hath this day come before me, C. D. a justice of the peace within and for the county aforesaid, and made oath that E. F. has been duly engaged and entered to serve on board of the said boat as a boatman to row and navigate the same from to , which said voyage is yet incomplete and unperformed, and that the said E. F. refuses to do his duty [*state the offence*] as by his contract he is bound.

These are therefore to require you to take the said E. F. and bring him, forthwith, before me to answer the premises and further to be dealt with according to law.

Given under my hand and seal, &c.

Summons against the owner for cruel usage, &c. of a boatman.

Territory of Missouri, } ss. The United States of America,
County of } To any constable of said County

Whereas complaint hath this day been made to me on oath by E. F. that he is engaged as a boatman in navigating the boat, whereof A. B. is master, and that the said A. B. (*here state the cause of complaint*)

You are therefore commanded to summon the said A. B. that he be and appear before me forthwith, to answer the premises,

Given under my hand, &c.

(CONSTABLE.)

Appointment of a deputy constable.

I, A. B. constable of the township of in the county of in the territory of Missouri, do hereby make substitute and appoint, C. D. of the same place, , my true and lawful deputy in the office aforesaid, as long as I shall hold the same, (or thus "*during the continuance of my will and pleasure.*"—Or, *for any particular purpose.*)

Given under my hand and seal at the township aforesaid this, &c.

(CONVEYANCES.)

Acknowledgment of a deed with relinquishment of dower.

Territory of Missouri,
County of } ss. United States of America,

Be it remembered that on this day of in the year of our Lord , before me a justice of the peace within and for the county aforesaid, personally came A. B. and C. his wife, and severally acknowledged the foregoing indenture as for their act and deed and the land and premises therein mentioned and bargained and sold to be the right and estate of E. F. therein mentioned, his heirs and assigns forever; she the said C. being by me first made acquainted with the contents thereof, and by me privately examined "apart from her said husband whether she executed the same voluntarily, and without compulsion, or undue influence of her said husband," acknowledged and declared that she executed the same voluntarily and without compulsion or undue influence of her husband.

Taken and certified the day and year aforesaid.

Acknowledgment of a deed by grantor.

Territory of Missouri,
County of } ss. United States of America,

Be it remembered that on this day of in the year of our Lord eighteen hundred and before me one of the justices of the peace within and for the county aforesaid, personally appears A. B. of and acknowledges the foregoing deed or instrument of writing to be his act and deed, and the land and premises therein mentioned and thereby bargained and sold to be the right and estate of C. D. his heirs and assigns forever.

Taken and certified the day and year above written.

(CRIMES and MISDEMEANOURS.)

No. I.

General form of a warrant.

Territory of Missouri,
County of } ss. The United States of America,
To any constable of said county

Whereas A. B. of hath this day given information upon oath, to me C. D. a justice of the peace within and for said county of that on the day of last past, at the county, aforesaid (A.) *(here describe the offence and person charged according to the facts sworn to, then proceed.)* These are therefore to command you, forthwith, to apprehend the said E. F. and bring him before me or some other justice of the peace, for this county, to answer the premises and further to be dealt with according to law. Hereof fail not at your peril.

Given under my hand and seal, at the county of aforesaid, this day of in the year of our Lord eighteen hundred and

C. D. J. P. *(seal.)*

No. 2.

Warrant to apprehend affrayers.

Territory of Missouri, } *ss.* The United States of America,
County of } To any constable of said county

Whereas A. B. of hath this day made oath before me C. D. a justice of the peace within and for said county, that on the day of last past (A.) at the county of aforesaid, E. F. of and G. H. of , *in a tumultuous manner made an affray, wherein the person of the said A. B. was beaten and abused by them the said E. F. and G. H. without any lawful or sufficient provocation given to them or either of them* by the said A. B. These are therefore to command you, forthwith, to apprehend the said E. F. and G. H. and bring them before me or some other justice of the peace for the said county, to answer the premises, and to be further dealt with according to law. Hereof fail not at your peril.

Given under my hand and seal this day of in the year of our Lord eighteen hundred and

C. D. J. P. *(seal.)*

No. 3.

Warrant for an assault.

(As in precedent No. 1 to the letter A. then say) one E. F. of the county of aforesaid, did unlawfully assault and beat him the said A. B. These are therefore to command you, &c. (as in precedent No. 1.)

No. 4.

Warrant for Arson.

(As in precedent No. 1 to the letter A then say) a house, to wit; (describe the kind) belonging to him the said A. B. and in his possession, was wilfully and maliciously set on fire and burned, and that he hath just cause to suspect, and doth suspect, that E. F.

of the county of aforesaid, , did feloniously, voluntarily and maliciously burn the said house. These are therefore to command you, &c. (proceed as in precedent No. 1.)

No. 5.

Warrant to apprehend a Burglar.

(As in precedent No. 2, as far as the letter A. then say,) in the night season, the dwelling house, (*if any other describe it,*) of him the said A. B. at the county of aforesaid, was feloniously and burglariously broken open, and entered, *and one silver watch of the value of ten dollars of the goods and chattels of him the said A. B. were feloniously and burglariously stolen, taken and carried away from thence,* and that he hath just cause to suspect and doth suspect, that E. F. of in the county of , labourer, the said felony and burglary did commit. These are therefore, &c. (as in precedent No. 2.)

No. 6.

Warrant for Bigamy.

(As in precedent No. 1. to the letter A. then say,) one E. F. being then and there married, and then and there the husband (or "wife," as the case may be) of one G. H. on the day and year aforesaid, at the county aforesaid, did unlawfully and feloniously marry and take to wife (or "husband") J. K. of (the said G. H. his wife, being then and there alive,) against the form of the statute in such case made and provided. These are therefore to command you, &c. (as in precedent No. 1.)

No. 7.

Warrant to apprehend a cheat, for obtaining goods by fraudulent pretences.

(As in precedent No. 1. to the letter A. then say,) E. F. of the county of aforesaid, *labourer,* did knowingly and designedly by false and fraudulent pretences, that is to say, by (here describe the offence,) falsely obtain and get into his hands and possession from the said A. B. (here mention the things) of the value of of the goods and chattels of the said A. B. with intent to cheat and defraud the said A. B. These are therefore, &c. (as in precedent No. 1.)

No. 8.

Warrant for compounding an offence.

(As in precedent No. 1. to the letter A, then say,) E. F. did charge and accuse one G. H. of with feloniously stealing, taking and carrying away *one silver watch* (here describe the articles,) of the goods and chattles of the said E. F. and he the said E.

F. well knowing the premises, but contriving and intending unlawfully and unjustly to pervert and prevent the due course of law in this behalf, and to cause and procure the said G. H. to escape with impunity for the offence aforesaid, afterwards, to wit, on the same day and year aforesaid, at the county of aforesaid, unlawfully and for gain sake, did take upon himself to compound the said offence, on the behalf of the said E. F. and then and there did exact, receive and have from the said E. F. the sum of for and as a reward for compounding the said offence, and desisting from all prosecution against the said E. F. for the offence aforesaid. These are therefore, &c. (as in precedent No. 1.)

No. 9.

Escape warrant against a criminal.

Territory of Missouri, } ss. The United States of America,
County of } To all sheriffs, bailiffs and constables of said county.

Whereas complaint is made this day, upon the oath of A. B. before me a justice of the peace within and for said county, that E. F. *labourer* who was lately committed to the jail of the said county of , by warrant of G. H. a justice of the peace within and for said county, charged with (here recite the offence,) did, on the day of last past, forcibly escape from the said jail and is now going at large. These are therefore to command you, and every of you to make deligent search for the said E. F. and him having found, to sieze and retake, and safely convey, or cause to be conveyed the said E. F. to the jail of the said county of there to be kept until he shall be thence discharged by due course of law. Given under my hand and seal, &c. (as in precedent No. 1.)

No. 10.

Warrant for Larceny.

(As in precedent No. 1 to the letter A. then proceed) divers goods and chattels of him the said A. B. to wit (here describe them) were feloniously stolen, taken and *carried* away, from the house of him the said A. B. at aforesaid, and that he hath just cause to suspect, and doth suspect, that E. F. late of , labourer, feloniously did steal, take and carry away the same. These are therefore, &c.

No. 11.

Warrant for Horse-stealing.

(As in precedent No. 1 to the letter A. then say) one *horse** of him the said A. B. of a bay colour, was feloniously taken stolen and *led* away, from , and that he hath just cause to suspect and doth suspect, that E. F. late of, *labourer*, feloniously did steal, take and lead away the same. These are therefore, &c. (as in precedent No. 1.)

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* *If for stealing hogs or cattle enumerate and describe them and say "driven away" instead of "led away" and "drive away" instead of "lead away."*

No. 12.

Warrant for Hog-stealing.

For marking hogs with intent to steal. (As in precedent No. 1 to the letter A then say) divers hogs of him the said A. B. to wit; (here enumerate and describe them) were then and there running at large and unmarked, and that afterwards to wit, on the same day and year aforesaid at the county aforesaid, one E. F. of well knowing the premises, but feloniously contriving and intending to steal the said hogs, did then and there unlawfully, unjustly and feloniously mark the same with the mark of him the said E. F. These are therefore to command you, &c. (as in precedent No. 1.)

Altering the mark of Hogs, &c.

[As in precedent No. 1 to the letter A then say] divers hogs of him the said A. B. *to wit, (here describe and enumerate them)* were running at large, marked with the mark of the said A. B. that is to say, *(here describe the mark)* and that one E. F. of well knowing the premises, but feloniously contriving and intending to steal the said hogs afterwards, to wit; on the same day and year aforesaid, at the county aforesaid, did unlawfully, unjustly and feloniously alter the said marks, by *(here state the alterations made)* These are therefore to command you, &c, *(as in precedent No. 1)*

To apprehend a person for causing to be brought to his house, &c. Hogs, &c. without ears.

(As in precedent No. 1, to the letter A, then say) E. F. of , unlawfully and feloniously did cause to be brought to his own dwelling house *(if another house or a vessel describe it)* divers hogs to wit *(here enumerate and describe them)* without ears, the property of the said *A. B.* contrary to the form of the statute in such case made and provided. These are therefore to command you, &c. *(as in precedent No. 1.)*

No. 13.

Warrant for Maiming.

(As in precedent No. 1 to A then say) E. F. of , contriving and intending to maim and disfigure him the said A. B. then and there on purpose and of malice aforethought, unlawfully and feloniously did make an assault, in and upon the said A. B. and the *right ear* of him the said A. B. on purpose and of malice aforethought, then and there unlawfully and feloniously did *bite off*, with

intention the said A. B. in so doing to maim and disfigure. These are therefore, &c. *(proceed as in precedent No. 1.)*

This precedent may be varied according to the offence as described in the statute, see title crimes and misdemeanours of the digest, sec. 4.

No. 14.

Warrant for a Rape.

(As in precedent No. 1 to A, then say,) E, F. of , did violently and feloniously make an assault in and upon the said A. B. and her the said A. B. forcibly and against the will of her the said A. B. then and there feloniously did ravish and carnally know. These are therefore to command you, &c. *(As in precedent No. 1, to the end.*

No. 15.

Warrant to apprehend Rioters.

(As in precedent No. 1, to A, then say,) E. F. of , G. H. of , J. K. of and divers other persons, to the said A. B. unknown, assembled together in an unlawful, routous and riotous manner, *with sticks, clubs, &c.* intending unlawfully to *assault, beat and* otherwise injure the said A. B. in his person and property, and being so assembled, did unlawfully, routously and riotously proceed to the dwelling house of him the said A. B. at and did then and there with *sticks, &c.* violently, unlawfully, routously and riotously assault and beat him the said A. B. and other enormities then and there did and committed upon the person and property of him the said A. B. These are therefore to command you forthwith to apprehend the said E. F. G. H. and J. K. and bring them, &c. *(As in precedent No. 2.)*

This precedent may be varied according to the degree and nature of the offence, as defined by statute. See crimes and misdemeanours, sec. 25 of the digest.

No. 16.

Warrant to apprehend a Robber.

(As in precedent No. 1, to A, then say,) In a certain highway, there, leading from to , E. F, of , unlawfully, violently and feloniously did make an assault in and upon the said A. B. and of the value of dollars *(recite all the goods taken,)* of the goods and chattels of him the said A. B. from the person and against the will, of the said A. B. in the highway aforesaid, then and there feloniously and forcibly, did steal, take and carry away, These are therefore, &c. *(As in precedent No. 1.)*

No. 17.

Warrant to apprehend an offender upon view of the Justice.

Territory of Missouri, } *ss.* United States of America,
County of } To any constable of said County

Whereas I. C. D. a justice of the peace, within and for the county of aforesaid. on the day of last past, at in the county aforesaid, in my own proper person did see, one E. F. of *here describe the offence.* These are therefore to command you, &c, (*As in precedent No.* 1.)

No. 18.

A search warrant.

Territory of Missouri, } *ss.* The United States of America,
County of } To any constable of said county

Whereas A. B. of hath this day given information upon oath, to me C. D. a justice of the peace within and for the county aforesaid, that the following goods and chattles, to wit (*here describe them*) have within days last past by some person or persons unknown been feloniously taken, stolen and carried away, from in the county aforesaid, and that the said A. B. hath probable cause to suspect, and doth suspect, that the said goods or part thereof are concealed in the dwelling house of E. F. at , in said county, ; These are therefore, to authorize and require you, with necessary and proper assistants, to enter in the day time, into the said house of the said E. F. at aforesaid, in the county aforesaid, and there deligently to search for the said goods, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found and also the body of the said E. F. before me, or some other justice of the peace for said county, to be disposed of and dealt with al according to law. Given under my hand and seal at in the said county, this day of , in the year of our Lord eighteen hundred and

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If witnesses are necessary to establish any facts, the justice may issue a summon for them.

No. 19.

Summons for a witness.

Territory of Missouri, } *ss.* United States of America,
County of } To the constable of township in said county

Whereas information hath been given before me C. D. a justice of the peace within and for said county, that [*here recite the offence* and that A. B. of in the said county is a material witness to be examined concerning the same. These are therefore to require you to summon the said A. B. to be and appear before me, at in said county, on the day of at the hour of in the noon of the same day to testify his knowledge concerning the premises. Hereof he is not to fail, and fail not at your peril, and have you then and there this writ. Given under my hand and seal this day of in the year, &c. C. D. J. P. [*seal.*]

Where the accused is admitted to bail or committed for trial, the witnesses are to be bound in a recognizance, to appear and testify at the next term of the proper court.

No. 20.

Recognizance of the witnesses.

Territory of Missouri, } *ss.* United States of America,
County of }

Be it remembered that, on this day of in the year of our Lord eighteen hundred and , at the county aforesaid A. B. of C. D. of and E. F. , before me G. H. a justice of the peace within and for said county, and each of them in his proper person acknowledged himself indebted to the United States of America, in the sum of dollars to be levied severally of each of their goods and chattels, lands and tenements, respectively, upon condition that if each of them do personally appear, at the circuit court [*or "superior court" if the accused is recognized or committed, for trial in that court*] on the first day of the next term thereof, to be holden for the said county of , at , then and there to give such evidence as he knoweth, on behalf of the United States against a certain L. M. on a certain charge of wherewith the said L.M. is charged, and that neither he nor either of them, do depart without leave of the said court then this recognizance to be void, else to remain in full force.

Taken and certified the day and year aforesaid.

G. H. J. P. [*seal.*]

If a witness refuses to enter into a recognizance, he may be committed or bound to good behaviour. 1 *Hale P. C.* 585.

This recognizance is to be certified and returned to court at which the accused is to be tried.

No. 21.

Recognizance where the prisoner is bound over for trial.

Territory of Missouri, } *ss.* United States of America,
County of }

Be it remembered, that on the day of in the year of our Lord, eighteen hundred and , A. B. of , C. D. of and E. F. of , personally came before me, J. K. a justice of the peace within and for said county, and acknowledged themselves to owe to the United States of America, that is to say, the said A. B. the sum of dollars, and the said C. D. and E. F. each the sum of dollars, to be levied of their goods and chattels, lands and tenements, if the said A. B. shall fail in the condition underwritten.

The condition of this recognizance is such, that if the above bounden A. B. shall personally appear at the circuit court, on the first day of the next term thereof to be holden for the county of on the day of next, then and there to answer an indictment to be preferred to the grand jury, against the said A. B. for horse stealing (*or other offence as the case is,*) whereof he stands charged; and shall not depart the same without the leave of the said court, then this recognizance to be void, else to remain in full force. Taken and certified the day and year aforesaid.

G. H. J. P. [*Seal.*]

To be returned as in the case of recognizance of witnesses.

No. 22.

Warrant of commitment.

Territory of Missouri, } *ss.* The United States of America,
County of } To constable of and the keeper of the jail of said county

These are to command you the said constable, forthwith to convey and deliver into the custody of the keeper of the jail of the county of aforesaid, the body of E. F. of taken and brought before me, a justice of the peace within and for the county aforesaid, and charged before me, upon the oath of A. B. of , with [*here describe the offence*] and you the said keeper of the said jail are hereby required to receive the said E. F. into your custody in the said jail, and him there safely keep, until he shall thence be discharged by due course of law. Given under my hand and seal, at the county aforesaid this day of , in the year of our Lord eighteen hundred and

Another.

Territory of Missouri, } *ss.* The United States of America,
County of } To the keeper of the jail of said county

Whereas E. F. late of &c. labourer hath been arrested and brought before me C. D. a justice of the peace within and for said county and charged upon the oath of A. B. of &c. with [*here describe the offence*] These are therefore to command you, that you receive the said E. F. into your custody in the jail of the said county, there to remain until he be delivered therefrom by due course of law. Given under my hand and seal, at the said county this day of in the year of our Lord eighteen hundred and

Another.

Territory of Missouri, } *ss.* The United States of America,
County of } To the keeper of the jail of said county

These are to command and charge you, that you receive into your said jail, the body of E. F. late of &c. charged before me C. D. a justice of the peace within and for said county, upon the oath of A. B. of &c. with that is to say, for [*here describe the offence*] and that you safely keep the said E. F. in your said jail until he shall be discharged therefrom by due course of law. Given, &c. [*as in the preceding*]

(*DEPOSITIONS.*)

No. 1.

Copy of the rule and notice to the opposite party.

C. D.
vs. } [*Here copy the rule verbatim.*]
E. F.

To Mr. E. F. the above named defendant.

Sir,—Take notice that by virtue of a dedimus issued pursuant to the above rule, I shall attend at the house of in the of , county of and territory of Missouri, on the day of next, between the hours of of the clock in the noon, and of the clock in the noon of that day, then and there to take the depositions of witnesses, to be read at the trial of the above cause, on the part of the *plaintiff*, when and where you may attend if you think proper. , of 181 .

Mr. E. F. C. D. *pltff.*

No. 2.

Affidavit of service.

County of set.

G. H. being duly sworn according to law, deposeth and saith, that on the day of *instant* , he served a copy of the above rule and notice on E. F. above named, by [*state the manner of the service*) and further the said G. H. saith not.

Sworn and subscribed to before me, a justice of the peace, within and for the county aforesaid, this day of 181 } G. H.

A. B. J. P.

No. 3.

Summons for witnesses.

Territory of Missouri, } *ss.* The United States of America,
County of } To the constable of in the said county.

Whereas I, A. B. a justice of the peace within and for said county, have received a dedimus issuing out of and under the seal of the court of the county of in the of , directed to &c. for the examination of witnesses in a certain cause there depending, between C D plaintiff, and E F defendant, and whereas I am informed that G. H. of and J. K. of are material witnesses for the plantiff [or *defendant*;] These are therefore to require you to summon the said G. H. and J. K. that they and each of them severally and personally be and appear before me, at the house of in the town of and county of on the day of at the hour of of the clock in the noon of that day, then and there to be examined and to testify the truth according to the best of their knowledge, for and on behalf of the said plaintiff [*or defendant.*] Hereof they are not to fail, and fail not at your peril. Given under my hand and seal this day of &c.

No. 4.

Return of dedimus.

[*To be endorsed on dedimus and signed by J. P.*]

The execution of this commission appears by a schedule hereunto annexed. Given at this day of &c.

A. B. J. P.

Depositions of witnesses, produced, sworn and examined, on the day of , in the year of our Lord eighteen hundred and , between the hours of of the clock, in the noon and of the clock, in the noon, of that day, at the house of in the town of and county of in the of , before me A. B. a justice of the peace within and for the county of aforesaid, by virtue of a dedimus for the examination of witnesses, in a certain cause now depending, in the court of the county of in the of , between C. D. plantiff and E. F. defendant, on the part of the plantiff [*or defendant*] directed to any judge or justice of the peace within and for the county of &c.

N. O. of lawful age being produced sworn and examined on the part of the plaintiff, deposeth and saith

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(ELECTIONS.)

County return or abstract of votes for delegate to congress.

To the governor of Missouri territory.

We the subscribers, A. B. clerk of the circuit court of the county of , and C. D. and E. F. two justices of the peace within and for said county of being met together at the in the town of in said county, on the day of in the year of our Lord eighteen hundred and , and having carefully examined the returns of an election held in the several townships in said county, on the day of , [it being the first Monday in August,] in the year of our Lord eighteen hundred and and enumerated and added together the votes therein contained, do certify that at the said election the votes for delegate to congress appear to be as follows, to wit:

In the township of	
For J. K. one hundred votes	100
For L. M. ninety votes	90
In the township of	
For J. K. two hundred votes	200
For L. M. two hundred and twenty votes	220
In the township of	
For J. K. one hundred and ten votes	110
For L. M. seventy five votes	75
	795

Whereby it appears that the whole number of votes given for delegate to congress in the county of , are *seven hundred and ninety five*, whereof J K had *four hundred and ten votes* and L M had *three hundred and eighty five votes.*

In testimony whereof, we have hereunto set our hands and affixed our seals this day of in the year of our Lord eighteen hundred and

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(FERRIES.)

Summons against a person keeping a ferry without license.

Territory of Missouri, } ss. United States of America,
County of } To the constable of the township of in said county.

Whereas information hath this day been given to me A. B. a justice of the peace within and for said county, by C D of [A] that E. F. of doth keep a ferry over and across the river at in the county aforesaid, and did on the day of last past, demand and receive pay of and from one G H, for transporting him over and across the said ferry, without license first had and obtained, as required by law; these are therefore to require you to summon the said E F to appear before me or some other justice of the peace for said county, on the day of to answer unto the said C D, who, as well for the county of aforesaid, as for himself, doth prosecute, of a plea that he render unto them, the sum of ten dollars, and to shew cause why the same should not be levied upon him for the said offence, according to law. Given, &c.

Summons against a Ferryman for neglect of duty.

(As in the preceding precedent to the letter A, then say) that E F of doth keep a stated ferry over and across the river , at in the county, and hath obtained a license for the same, as required by law, and that the said E F, neglecting his duty in this behalf, doth not [*here state the complaint*] as by law he is required; these are therefore to require you to summon the said E.

F to appear before me or some other justice of the peace of the said county, on the day of to answer the said C D, who, as well for the county of aforesaid, as for himself, doth prosecute, of a plea that he render unto them the sum of , and to shew cause why the same should not be levied upon him for the said offence, according to law. Given under my hand and seal, *&c.*

(*HABEAS CORPUS.*)

A writ of Habeas Corpus ad subjiciendum.

"By act of Legislature, 1807."

Territory of Missouri, } ss. United States of America,
County of } To the sheriff of, &c. *Greeting.*

We, A B and C D two justices of the peace within and for the county of in the territory of Missouri, command you that the body of E. F. in the jail of the said county, under your custody [as it is said] detained, under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name the said E F may be charged in the same, you have before us, at in the town of in said county, on the day of then and there to do, submit to and receive whatsoever we shall consider in that behalf. Witness, *&c.*

(*INCLOSURES.*)

Warrant to three householders to view a fence.

Territory of Missouri, } ss. The United States of America,
County of }

To A B, C D, and E F, householders of this county,

Whereas G H of said county, farmer, hath this day complained to me J K a justice of the peace for the county aforesaid, that a belonging to L. M of the said county, did on the day of break into the corn field of the said G H, which was fenced and enclosed according to the statute in that case made and provided, whereby he hath sustained considerable damage; (A) these are therefore to require and authorise you forthwith to go and view the fence of the said corn field, and take a memorandum thereof in writing, the better to enable you to testify, if you should be required, concerning the premises. Given under my hand and seal at the county aforesaid, on the day of *&c.*

A summons against the owner of trespassing animal.

Territory of Missouri, } ss. United States of America,
County of } To the constable of the township of in said county.

Whereas (*proceed as in the foregoing to letter A, then say*) These are therefore to require you to summon the said L M to appear before me or some other justice of the peace for said county, to answer the premises. Given, &c.

(INDIANS.)

Warrant to apprehend a person for selling liquor to Indians without authority.

Territory of Missouri, } ss. United States of America,
County of } To any constable of said County

Whereas A. B. of &c. hath this day given information upon oath, before me C D a justice of the peace for the county aforesaid, that on the day of at the county aforesaid, E F of did sell spirituous liquor, that is to say [*here state the quantity and kind of liquor*] to an indian of the tribe, without permission first had and obtained from the superintendant of indian affairs, contrary to the form of the statute in such case made and provided. These are therefore to require you to apprehend the said E F and bring him before me or some other justice of the peace within and for said county, to answer the premises and be further dealt with according to law. Given under my hand and seal this day of in the year

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(INQUEST.)

Warrant to summon a jury of inquest.

Territory of Missouri, } ss. To the constable of the township of
County of } in said county

You are hereby commanded, forthwith to summon and warn eighteen good and lawful men, householders of your township, to be and appear before me A B coroner of said county, at in the township of and county aforesaid, on this day, at of the clock in the noon, then and there to enquire of, do and execute all such things, as shall be lawfully given them in charge, touching the death of C D. And be you then and there to certify what you shall have done in the premises and further to do and execute, what shall then and there be enjoined you, according to law. Given under my hand and seal the day of &c.

The form of oath required to be taken by the jurors is prescribed by law.

Proclamation for witnesses.

O yes, O yes, O yes, if any man can give evidence how and in what manner C D here lying came to his death, draw near and you shall be heard.

Summons for witnesses.

Territory of Missouri, } ss. The United States of America,
County of } To E F, G H, and J K, Greeting.

We command you and every of you that all business and excuses whatsoever being laid aside, you do in your proper persons appear before me, coroner of the said county, and an inquest now sitting at in said county, to testify the truth and give such information and evidence as you and every of you shall know, touching the manner in which C D [*or a certain person unknown*] there lying dead, come to his death and touching all other matters to which you shall be examined, and this you are in no wise to omit at your peril. Given under my hand this day of

Inquisition.

Territory of Missouri,
County of } *ss.* The United States of America,

An inquisition indented, taken at in the county of on the day of &c. before me A B, coroner of the county aforesaid upon the view of the body of C D then and there lying dead, upon the oaths of L M, N O, P Q, &c. [*name the jurors sworn*] good and lawful men, householders of the township of in said county, who being sworn and charged diligently to enquire and true presentment make, how, in what manner and by whom the said C D, came to his death, upon their oaths do say [*here insert the finding of the inquest.*]

In witness whereof, as well the aforesaid coroner, as the jurors aforesaid have to this inquisition, put their seals, at the place and on the day and year first above mentioned.

L M, [*seal*]
N O, [*seal*] } Jurors.

A B, coroner [*seal*]

All the jurors must sign.

Recognizance of witnesses.

Territory of Missouri,
County of } *ss.* United States of America,

On this day of in year of our Lord E F of G H of and J K of came before me A B coroner of the county of aforesaid and each of them in his proper person acknowledged indebted to the United States of America in the sum of to be levied severally of each of their goods and chattels, lands and tenements, upon condition that if each of them do personally appear at the court, on the first day of the next term thereof to be holden for the said county at on the day of and then and there deliver and set forth his knowledge touching the death of C D and do not depart thence without the leave of the said court, that then this recognizance to be void and of none effect, else to remain in full force.

Acknowledged before me the day and year above written.

A. B. (coroner)

(INSOLVENT DEBTORS.)

Notice of intention to apply for relief, to be published.

NOTICE.—My creditors will take notice, that on the day of , next I shall make application to C D and E F esquires two justices of the peace within and for the county of in the territory of Missouri, [*or to G H, judge, &c.*] to be permitted to take the benefit of the act concerning insolvent debtors and the acts supplementary thereto.

Jail of county day of 181 A. B.

Petition.

To C. D. and E. F. two justices of the peace within and for the county of The petition of A B of &c. humbly sheweth. That your petitioner is imprisoned in the jail of the county of under execution at the suit of for a debt of together with costs of suit; that he is justly indebted to several other persons in various sums of money, which by reason of unavoidable misfortunes he is totally unable to pay, and that he has delivered up to the sheriff of said county all his property, together with all his books, title papers, and evidences of debts, for the benefit of his said creditors, an inventory whereof is hereunto annexed. Your petitioner therefore prays that you will grant him such relief as is prescribed and directed by the several statutes in such case made and provided. And he will pray, &c.

Warrant by two justices to bring the prisoner before them.

Territory of Missouri } ss. United States of America,
County of } To the keeper of the jail of said county.

Whereas A B of &c. now a prisoner upon execution for debt in your custody, hath, by his petition to us C D and E F, two justices of the peace for the said county, prayed that he may be discharged out of custody pursuant to the statutes in such case made and provided. These are therefore, to require you to bring before us, at in the county aforesaid, on the day of next, the body of the said A B, and have then and there this precept. Given under our hands and seals this day of in the year, &c.

The form of the oath to be taken is prescribed by the law on this subject which see.

Warrant of Discharge.

Territory of Missouri } ss. The United States of America,
County of } To the sheriff or keeper of the jail of said county.

We C D and E F two justices of the peace for said county, hereby command you, forthwith to release and set at liberty A B a prisoner now in your custody, by virtue of an execution against him at the suit of [*if more executions mention them*] the said A B having complied with the provisions of the statutes of the territory of Missouri concerning insolvent debtors, if the said A B, is detained in your custody for no other cause than the execution, &c aforesaid; and for so doing this shall be your warrant. Given, &c.

(*MARKS AND BRANDS.*)

Warrant for altering a mark or brand.

Territory of Missouri } ss. United States of America,
County of } To any constable of said county.

Whereas A B of &c. hath this day given information upon oath, before me C D a justice of the peace within and for said county, that on the day of last past at the county aforesaid, (A) divers hogs to wit (*here enumerate and describe them*) of him the said A B were running at large at or near in the county aforesaid, *marked* with the mark of him the said A B to wit, with (*describe the mark*) and that E. F. of did then and there alter the said mark by (*state the alteration*) These are therefore to command you to apprehend the said E F forthwith and bring him before me or some other justice of the peace of said county, to answer the premises and be further dealt with according to law. Given under my hand and seal this day of &c.

The foregoing precedent may be varied so as to suit, the several offences of mismarking and misbranding and concealing those offences.

Warrant for killing hogs in the woods, &c.

(*As in the preceding precedent to letter A then say*) E F of did kill divers hogs to wit (*enumerate and describe them*) in the woods at (*or near*) a certain place there called , and that he the said E F did not within three days thereafter, show the head and ears of the said hogs to the next magistrate nor to any two substantial householders as by law he was required to do. These are therefore, &c. (*as in the preceding precedent.*)

(*MILLS AND MILLERS.*)

Warrant against Miller.

Territory of Missouri, } ss. The United States of America,
County of } To the constable of township in said county

Complaint having this day been made to me A B a justice of the peace within and for said county, upon the oath of C D of &c. that E F of , a miller at mill, in the said county did, on the day of last, refuse to grind a bag of corn (or "*wheat*") belonging to the said C D and carried to said mill to be ground according to his turn; (*or did not sufficiently grind a bag of corn, or wheat belonging to the said and carried to the said mill to be ground; or did take more than part of a bag of corn, or wheat belonging to the said and carried to said mill to be ground, for the toll thereof*) contrary to the act of assembly in such case made and provided. These are therefore to command you, forthwith, to bring the said E F before me or some other justice of the peace of said county, to answer the premises. Given under my hand and seal, &c.

(ROADS AND HIGHWAYS.)

Petition for laying out a Road.

To the honorable the judge of the circuit court, now holding said court within and for the county of

The petition of the subscribers inhabitants of the township of in said county, humbly sheweth.

That your petitioners labour under great inconveniences for want of a road or highway, to lead from to your petitioners therefore pray your honor to appoint proper persons to view and lay out the same, according to law, and they will ever pray, &c.

Return of commissioners.

To the honorable the judge of the circuit court, &c.

We the persons appointed by the within order of court to view and lay out the road therein mentioned, do report that in pursuance of the said order we have viewed and laid out, and do report for public use the following road, to wit, beginning *(here describe the courses and distances with references to the improvements through which it passes,)* as the nearest and most practicable route, from to , and to the greatest ease and convenience to the inhabitants, and as little as may be to the prejudice of any person or persons. Given under our hands this day of &c.

Petition for a review of a road.

To the honorable, &c. The petition of &c, respectfully sheweth.

That a road hath been lately laid out by order of court, from to , which road (if confirmed by the court) will be very injurious to your petitioners and burthensome to the inhabitants of the township through which the same passes. Your petitioners therefore pray your honor to appoint persons to review the said roads and parts adjacent and make report to the court according to law. And they will ever pray, &c.

Report.

To the Honorable, &c.

We the persons appointed to review the road within mentioned and parts adjacent, do report that in pursuance of the said order, we did review the same, and have laid out for public use the following road, to wit, beginning &c. (or, after "same" say and in our *opinion there is no occasion for any alteration in the said road,)* witness, &c.

Petition for vacating a road.

To the honorable, &c. The petition of *&c.* Respectfully sheweth.

That a road has been long since laid out from &c. to &c. which road (*or part of which road beginning, &c.*) your petitioners conceive is now become useless, inconvenient and burthensome to the inhabitants thereabout, your petitioners therefore pray your honor that the said road may be vacated, agreeably to the statute in such case made and provided, and they will pray, *&c.*

Warrant for failing to send hands or attend to keep the road in repair, &c.

Territory of Missouri, } *ss.* The United States of America,
County of } To the constable of township in said county.

Complaint being this day made to me A B a justice of the peace within and for said county, by C D overseer of the road from to in said county, &c. that E F did on the day of last, fail to go and assist, with proper tools, (two days previous notice having been given him by the said C D) to clear & repair the said road, (*or to send G H, a servant or male labouring slaves above the age of sixteen years and under forty five years, belonging to the said E F*) contrary to the statute in such case made and provided. These are therefore to require you to summon the said E F forthwith to appear before me or some other justice of the peace for said county, to answer the premises. Given under my hand and seal this day of *&c.*

Warrant for making obstructions.

Territory of Missouri, } *ss.* United States of America,
County of } To the constable of township in said county.

Complaint being made to me A B a justice of the peace within & for said county, upon the oath of C D of , that on the day of last, E F of *&c.* did (*here state the obstructions in or over (or across)* a certain public road leading from to , in the said county contrary to the form of the statute in such case made and provided; You are therefore required to summon the said E F, forthwith, to appear before me or some other justice of the peace for said county, to shew cause why the penalty of fifteen dollars should not be levied on him for his said offence, according to the said statute; and there make return of this warrant. Given under my hand, *&c.*

(SLAVES.)

No. 1.

A certificate of the seizure of a gun &c.

Territory of Missouri, } The United States of America,
County of } *ss.* To all whom it may concern.
Township of }

Whereas A B, of the county and township aforesaid, , hath this day brought before me C D, a justice of the peace within and for the county, &c. township aforesaid, one gun, with powder and shot by him found and seized in the hands and possession of a certain free mulatto man, known by the name of (*or negro man slave belonging to* as the case may be) who is not by law qualified to keep the same; and the said A B, having also before me made due proof of such seizure as aforesaid. By virtue of the statute in such case made and provided, I do hereby order and direct that the said A B, shall and may retain the said gun, powder and shot, to his own use. Given under my hand and seal, &c.

No. 2.

Licence to keep arms and ammunition.

Territory of Missouri } United States of America,
County of } *ss.* To all whom it may concern.
Township of }

Whereas it appears to me, C D, a justice of the peace, within and for the county and township aforesaid, that a free mulatto man, is a house keeper within the township aforesaid (*or a negro man slave belonging to resides and lives at a frontier plantation within the county aforesaid,*) these are therefore to licence and permit the said free mulatto man (*or negro man slave*) to keep and use one gun, &c. Given under my hand and seal, &c.

No. 3.

Warrant for permitting a slave to remain more than four hours on offenders plantation without leave, &c. on sec. 6, p. 374 digest.

Territory of Missouri, } United States of America,
County of } *ss.* To any constable of said county.
Township of }

Whereas information hath this day been given to me, A B, a justice of the peace within and for the county and township aforesaid, by C D, that on the day of last past, (A) E F a *master* of a family in this county, did knowingly permit and suffer one negro man slave, the property of G H to be and remain on the plantation of him the said E F above four hours at one time, without the leave of the said G H or his overseer contrary to the statute in such case made and provided. You are therefore hereby commanded to summon the said E F to appear before me, at in this county on the day of next, to answer the premises. Given under my hand and seal, &c.

No. 4.

Warrant for permitting more than five slaves to continue on a plantation, as above, also on sec. 6.

(As in No. 3 to letter A) E F the owner (*or overseer*) of a plantation in this county, knowingly permitted more than five negroes (*or slaves*) not being his own to be and remain on the plantation of him the said E F, for more than four hours at one time, without the leave of the owner or overseer of the said negroes, contrary, &c. (*conclude as in No. 3.*)

No. 5.

Warrant for being at an unlawful meeting of slaves or harbouring them, on sec. 7 of the digest.

(*As in No.* 3 *to letter A*) A B, C D, and E F, (*describe them whether white persons, free negroes or mulattoes*) were found in company with slaves at an unlawful meeting of the said slaves then held at in the county aforesaid (*or did harbour or entertain a slave belonging to without the consent of the said as the case may be*) contrary to the statute in such case made and provided. These are therefore to command you to apprehend the said A B C D and E F and bring them before me or some other justice of the peace of this county to answer the premises &c. to be dealt with according to law. Given under my hand and seal, &c.

No. 6.

Warrant to search for outlying slaves.

Territory of Missouri,
County of } *ss.*
The United States of America,
To the sheriff and the keeper of the jail of said county Greeting;

Whereas we A B and C D, two justices of the peace within and for said county, have this day received information from E F. that two or more slaves to wit, A, a slave belonging to and B a slave belonging to and others unknown, have runaway from their said masters, and are lying hid and lurking in this county, killing hogs and committing other injuries to the inhabitants of this territory. These are therefore to command and require you, the sheriff of said county, to take such power with you as you shall think fit and necessary for the effectual apprehending such outlying slave or slaves, and to go in search of the said slaves, and upon their being apprehended, to commit them to the jail of this county for further trial. And you, the keeper of said jail, are hereby required to receive the body of the said slave (*or slaves*) and the same safely to keep it in your jail until he (or they) shall thence be discharged by due course of law. Given under our hands and seal, &c

No. 7.

Order of a justice, for committing a slave to jail who is suffered to go at large and hire himself out.

Territory of Missouri, } United States of America.
County of } ss. To the keeper of the jail of said county.
Township of }

Whereas A, a slave belonging to of the county of hath been apprehended in this county, and this day brought before me, J P a justice of the peace within and for the township and county aforesaid, by B C, for having been permitted by the said to go at large, and hire himself out, contrary the statute in such case made and provided, and it appearing to me that the said A comes within the purview of the said statute. These are therefore to require you to receive the body of the said A, and him safely keep in the jail of the said county, until the next court to be held for the said county or until he shall thence be discharged by due course of law. Given under my hand and seal, *&c.*

No. 8.

Warrant to commit to jail, an emancipated slave, travelling out of the county where he resides without a certificate.

Caption as in the preceding.

I send you herewith the body of an emancipated slave, a resident of the county of , who hath been found travelling in this county, without a copy of the instrument of his emancipation, under the statute in such case made and provided. And you are hereby commanded to receive the body of the said and him safely keep in the jail of the said county, until such copy of the instrument of his emancipation is produced, and your fees as jailor paid or until he shall otherwise be discharged by due course of law. Given under my hand and seal, *&c.*

(SMALL DEBTS.)

Subpœna for a witness.

Territory of Missouri, } The United States of America,
County of } ss. To the constable of said township
Township of }

You are hereby commanded to summon A B and C D that all excuses and delays set aside, they be and appear before me L M, a justice of the peace within and for said township, at in said township, on the day of at the hour of in the noon of that day, to testify the truth of their knowledge, touching a certain matter of controversy, before me depending, between E F plaintiff, and G H defendant, on the part of the hereof they are not to fail, and fail not at your peril, and have you then and there this writ. Witness my hand and seal, &c.

Affidavit for the adjournment of a cause.

A. B. }
vs. } *county, sct.*
C. D. }

This day personally appears C D the above named defendant before me E F, a justice of the peace for said county, and makes oath that G H who is a material witness for him in the above cause, resides out of the said county, [*or at a greater distance than twenty miles from the place of trial,* or from [*state the cause*] cannot be obtained personally.]

Sworn and subscribed to, this day of } C. D.
E. F. J. P.

Attachment against a withees.

Territory of Missouri }
County of } *ss.* United States of America,
Township of } To any constable of said township.

You are hereby commanded to attach A B, late of your township, , if he be found in your bailwick, and him safely keep so that you have his body before me, J P a justice of the peace within and for the township aforesaid, at , on the day of *next,* [*or forthwith*] to answer, for a contempt committed by him, in not appearing before me at on the day of *last,* to testify his knowledge, in a certain controversy then and there depending, and then an there to have been tried, between C D, plaintiff and E F defendant, after being duly subpœned for that purpose. Witness my hand and seal, &c.

Summons for a jury.

Territory of Missouri, } The United States of America,
County of } *ss.* To the constable of said township,
Township of }

You are hereby commanded, that you cause to come before me, J P a justice of the peace within and for said township, at on the day of next [*or forthwith*] J S. &c. [*naming the jurors*] good & lawful men of the county aforesaid, by whom the truth of the matter may be the better known, to make a jury between A B plaintiff and C D defendant, in an action of , because as well the said C D the defendant as the said A B, the plaintiff, between whom the controversy is, have put themselves upon that jury, and have you then and there this writ. Given under my hand and seal, &c.

Scire facias to revive a judgment.

Territory of Missouri, } United States of America,
County of } *ss.* To the constable of township.
Township of }

Whereas on the day of in the year before J. K. a justice of the peace within and for the township of in the county aforesaid, A C recovered a judgment for dollars for debt, and for his costs, against A D, whereof he is convict as appears to me, and for as much as the said A C, hath complained to me J K. a justice of the peace within and for the township of aforesaid, that he hath not received any satisfaction for his said debt and costs; therefore I command you to summon the said A D. to appear before me, at in the township of in the county of aforesaid, on the day of to shew cause why execution should not be made of the debt and costs aforesaid; and that you be then and there to shew how you have executed this warrant Given under my hand and seal this. &c.

(*STRAYS.*)

The oath of the taker up is prescribed by statute, see digest p. 403.

Order to three house holders, to appraise and describe a stray.

Territory of Missouri, } The United States of America,
County of } ss. To A B, C D and E F house holders of this
Township of } township

Whereas A F, of the township of aforesaid, hath this day given information on oath, to me J P a justice of the peace for the township aforesaid, that he hath taken up a stray *(here express the kind)* upon his own plantation *(or place of residence.)* These are therefore to command you, having been first duly sworn for that purpose to particularize and describe as near as circumstances will admit the kind, brands, marks, age, colour and stature of said stray, and to appraise the same, and that you or any two of you make out under your hands two lists of the valuation and description so made, one of which you are forthwith to return to me, and the other you are to deliver to the said A F. Given under my hand and seal &c.

Certificate of the appraisors endorsed on or annexed to the order.

Pursuant to the within *(or the above)* to us directed, we have this day viewed a stray *(express the kind)* shown to us by A T of and do find the same to be *(here describe the kind, marks, brands, stature, colour and age of the stray)* and we do appraise the said to the sum of Certified under our hands this day of in the year, &c.

Sworn and subscribed to before me J P a justice of the } A B.
peace within and for the township of county of } C D
and territory of Missouri, this day of 18 } E. F

J P.

Advertisement of a stray

Taken up as a stray, by A T of the township of in the county of , *(describe the stray, by its kind, sex, age, stature, colour,*

&c. as given by the appraisers) appraised to by A B C D and E F appraisors duly appointed and sworn for that purpose.

(TAVERNS AND TAVERN-KEEPERS.

Warrant for keeping tavern, &c. without license.

Territory of Missouri, } ss. United States of America,
County of } To the constable of the township .

Whereas it appears to us A B and C D two justices of the peace within and for said county, by the information of E F, that on the day of last, and on divers other days and times since that day, A O of this county, did keep *(and still doth keep)* a public inn *(or tavern, dram-shop, or public house of entertainment as the case may be)* at in your township. without license first had and obtained for that purpose as required by law. These are therefore to command you to summon the said A O to appear before us, at , on the day of next to answer the premises and further to be dealt with according to law. Given under our hands and seals, &c.

Warrant for retailing spirits, &c. without license,

Caption as above.

Whereas A B of hath this day given information upon oath before me CD, a justice of the peace within and for the township of in said county, that on the day of last, at in the county aforesaid E F of said county, did retail and sell a certain spirituous liquor called by less quantity or measure than one quart, to one G H, without license first had and obtained for that purpose, as required by law. These are therefore to command you to apprehend the said E F and bring him before me or some other justice of the peace within and for said county, to answer the premises and be further dealt with according to law. Given under my hand and seal, &c.

(VAGRANTS.)

Warrant to apprehend a vagrant.

Territory of Missouri, } ss. United States of America,
County of } To the constable of township or the sheriff of county.

Whereas information hath this day been made to me J P a justice, &c, by A B of &c. that A T an able bodied man, who, not having wherewithal to support himself, is found loitering about, and has a wife and children without means of subsistence *(if any other description of a vagrant mention it)* These are to require you to apprehend the said A T and bring him before me or some other justice of the peace for this county, to be dealt with according to law. Given under my hand and seal, &c.

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